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UNIVERSITY OF ALBERTA

A COMPARATIVE STUDY OF THE ACQUISITION OF  
OIL AND GAS RIGHTS IN AFRICA

by

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A Thesis

Submitted to the Faculty of Graduate Studies  
In Partial Fulfilment of the Requirements for the Degree  
of Master of Laws

Department of Law

EDMONTON, ALBERTA

April, 1967



UNIVERSITY OF ALBERTA

FACULTY OF GRADUATE STUDIES

The undersigned certify that they have read, and recommend to the Faculty of Graduate Studies for acceptance, a thesis entitled A Comparative Study of the Acquisition of Oil and Gas Rights in Africa, submitted by Martin Molokwu Olisa in partial fulfilment of the requirements for the degree of Master of Laws.



## ABSTRACT

### I. THE PROBLEM

Statement of the problem. With emphasis on comparative aspects, this study is concerned with the current legal framework for the acquisition of oil and gas rights in the following African countries: Algeria, Angola, Cameroon, Chad, Egypt, Ethiopia, Gabon, Ghana, Kenya, Libya, Mali, Morocco, Mozambique, Niger, Nigeria, Sierra Leone, Senegal, Somalia, Spanish Sahara, Sudan and Tunisia.

The scope of the study is (1) to inquire into the legal framework which governs the acquisition of oil and gas rights in the countries enumerated above;

(2) to compare related provisions of petroleum laws and to find out, for instance, how similar problems are sought to be solved in different jurisdictions;

(3) to find out if there are characteristic trends in the grants of oil and gas rights and if they bear any relationship to similar grants in other jurisdictions especially in the Province of Alberta, the Middle East and the United States;

(4) to offer suggestions and make criticisms where appropriate.

Importance on the study. As far as the writer is aware, there is no book, journal or periodical that deals with petroleum law in the whole of Africa or a greater part of it in a comparative way. Some books deal piecemeal with the petroleum legislation of a few selected countries and make no







Source: World Oil, Vol. 163, No. 3 (August 15, 1966), p. 146.



attempt to discover what trends appear in African petroleum laws or in the provisions for the acquisition of petroleum rights.

With one possible exception, there is no single source for a knowledge of what petroleum rights may be acquired in Africa, how they are acquired or lost and of the obligations attached to those rights. The exception is a collection of the original texts of petroleum statutes, codes and decrees, and also some concession contracts.<sup>1</sup> The texts are the most authoritative source of factual information for this study.

## II. METHOD OF INVESTIGATION

The study commences with an account of the general economic and legal setting in so far as it is related to petroleum operations in Africa. From a consideration of the legal setting, a broad classification of African petroleum laws is attempted. As will be shown later,<sup>2</sup> three groups are suggested for the purpose of this study. Comparisons are made mainly among groups with substantially similar petroleum laws, and illustrations are drawn from one or two petroleum statutes or codes as representatives of each group and from petroleum laws with unique or substantially differing provisions. With this plan in mind, provisions dealing with the granting of petroleum rights and the rights and obligations attached to the various rights are examined in subsequent chapters. The laws relied on are as on December 31, 1966.



## ACKNOWLEDGEMENTS

Grateful appreciation and acknowledgement is herewith expressed to Professor A.R. Thompson, of the Department of Law, whose suggestions and guidance throughout the course contributed greatly to the final product of this thesis.

To other members of his thesis committee - Dr. E.J. Hanson and Professor A. Smith - the writer is indebted for their valuable suggestions.





# TABLE OF CONTENTS

CHAPTER	PAGE
I. THE SETTING . . . . .	1
General Setting . . . . .	1
Economic Setting. . . . .	3
Legal Setting . . . . .	13
II. OWNERSHIP OF OIL AND GAS. . . . .	19
Basis of State Ownership and Control . . . . .	19
Stages of Operation . . . . .	23
Government Agency . . . . .	26
Comment . . . . .	27
III. RECONNAISSANCE AND EXPLORATION STAGES. . . . .	29
Eligibility of Applicant . . . . .	30
Reconnaissance Stage . . . . .	35
Rights Granted . . . . .	35
Area . . . . .	36
Duration . . . . .	36
Fees, Rentals, Bonus and Work Obligation. . . . .	39
Exploration Stage . . . . .	40
Area Limitation . . . . .	42
Duration . . . . .	44
Work and Other Obligations. . . . .	46
IV. EXPLOITATION STAGE . . . . .	51
Systems of Grant . . . . .	51
Grant of Exploitation Rights to Explora- tion Right Holder . . . . .	52
Direct Grant over Areas not Covered by Exploration Permit. . . . .	56
Grants through Government Sales . . . . .	76
Grants by Virtue of Transfer or Assignment. . . . .	78
Eligibility of Applicant . . . . .	79
Area . . . . .	82
Mandatory Area Reduction. . . . .	85
Duration . . . . .	86
V. RIGHTS OF EXPLOITATION RIGHT HOLDERS. . . . .	92
Rights Granted . . . . .	94
Substance Granted . . . . .	97
Nature of Interest Acquired . . . . .	104
Ancillary Rights. . . . .	109
Restrictions and Reservations . . . . .	116





CHAPTER	PAGE
VI. OBLIGATIONS OF EXPLOITATION RIGHT HOLDERS. . . .	118
Work Obligation. . . . .	119
Supply of National Consumption Needs . . . . .	126
Obligations Relating to Employment and Training of Nationals . . . . .	135
Provisions Relating to Revenue . . . . .	140
Forms of Payments . . . . .	142
Conclusion . . . . .	163
VII. CONCLUSIONS . . . . .	165
The Trends . . . . .	168
FOOTNOTES . . . . .	176
BIBLIOGRAPHY . . . . .	194
APPENDIX I . . . . .	199
APPENDIX II . . . . .	250



## LIST OF TABLES

TABLE		PAGE
1.	World Estimated Crude Oil Production 1963-1965 . . . . .	4
2.	World Crude Oil Production - First Half of 1966 . . . . .	5
3.	Rig Activity. . . . .	6
4.	Potential Gas, Oil and Natural Gas Liquid Resources Of the World. . . . .	8
5.	Estimated Proved Crude Oil Reserves in World, by Countries . . . . .	9
6.	Estimated Proved World Reserves of Natural Gas, by Countries . . . . .	10
7.	Duration of Exploitation Rights . . . . .	88
APPENDIX 1 - Tables, Comparison of Petroleum Laws . . .		199
APPENDIX 2 - Tables of Equivalents . . . . .		250



## CHAPTER I

### THE SETTING

#### I. GENERAL SETTING

All the countries of Africa whose oil and gas laws are examined in this study are among what has become variously and fashionably known as under-developed, developing or emergent countries. Their most essential concern is to be "developed". The legislation governing the exploitation of natural resources gives expression to the most pressing of the state's aspirations; that is, accelerations of economic development through aggressive exploitation of its natural resources. In particular, the exploitation of petroleum resources is widely regarded as a keystone to industrialization and occupies a prominent position in the scheme of economic development.

The countries are in great need of foreign capital and technical and managerial skills. As a matter of necessity, all these essentials had to be, and still are, imported. Even where arrangements are made for joint petroleum ventures between a foreign company and the host state, (Algeria, Egypt, Morocco, Tunisia) it is the former that bears the cost and risk of exploration although such costs are recoverable in stages if and when commercial production is attained. The





desire for rapid economic growth through foreign capital and know-how, on the one hand, and the fear of economic domination and its effect on the sovereignty of the State, on the other, places governments in a dilemma. As in other countries that are largely dependent on foreign investment, the problem has been how to strike a favorable balance between foreign exploitation and national interest. It is the task of the law to provide the machinery for achieving that balance. What the balance should be varies from state to state depending on each state's path to industrialization and the ultimate conditions to be achieved through industrialization.

The constant interaction between economic forces and the legal measures to regulate them is not peculiar to Africa. It is far more in evidence in oil producing countries of North Africa (Algeria, Egypt, Morocco, Tunisia) than in other African countries. This is largely due to the heavy dependence of the former on petroleum resources in their national budget. In all cases, however, petroleum policy and the laws to govern the industry are closely tied to the economic and social level of the country.

The state's primary aim is to secure enough petroleum resources to free it from reliance on imports. When the extent of the country's petroleum reserves is fairly well estimated and commercial production begins or national self sufficiency is attained, the primary objective of the government





shifts to the necessity of reaching foreign markets, increased revenue, participation in the business or greater control of operations (Algeria, Egypt, Libya, Nigeria). The logical sequence is that the law is amended. In many cases, greater financial obligations are attached to the grants of oil and gas rights as a result of the amendments.

Judging from rapid increases in the level of expenditure on exploration and development, the international petroleum industry appears to take the view that petroleum legislation in Africa provides a favorable environment in which oil and gas industry can function with mutual benefit to the foreign investor and the host country.

## II. ECONOMIC SETTING

Crude oil production in Africa has shown a phenomenal development in recent years. In comparison with the increase of crude oil production in North America, South America, Middle East and Europe, Africa has, since 1962, the largest yearly percentage increase. According to a World Petroleum report for 1963,

Africa again showed the largest percentage increase, almost 50%, and has reached the one million b/d level. Its 356,000 b/d was 1/5 of the 1,455,200 b/d gain for the entire world. Algeria rose 20%, and Libya continued its very rapid growth, recording an increase of 142%. These two countries' combined output now represents 3.7% total world production compared with virtually nothing a few years ago.<sup>3</sup>



TABLE I.- WORLD ESTIMATED CRUDE OIL PRODUCTION  
(Thousand Metric Tons)

	1963	1964	1965	% Change 1964-65	1965 % of Total
North America	405,862	412,661	422,500	+ 2.4	28.0
Caribbean Area	184,536	193,113	198,600	+ 2.9	13.3
Latin America	40,293	40,686	41,050	+ 0.9	2.7
Middle East	343,830	386,727	420,500	+ 8.7	28.0
Egypt	5,600	6,353	6,400		
Africa (excluding Egypt)	51,426	75,899	99,650	+31.3	6.6
Libya	22,039	41,572	58,500	+41.5	
Algeria	23,640	26,227	26,000	- 0.9	
Nigeria	3,799	5,933	13,000	+119.2	
Gabon/Congo (Brazzaville)	999	1,142	1,350		
Angola	799	905	700		
Morocco	150	120	100		
Western Europe	18,313	19,967	20,910	+ 4.4	1.4
Far East	28,404	31,753	33,190	+ 4.5	2.2
Eastern Europe and China	228,709	247,732	268,225	+ 8.3	17.8
World Total	1,301,373	1,408,538	1,504,625	+ 6.8	100.0

Source: Africa Institute Bulletin (Pretoria, South Africa: Africa Institute, March 1966), p. 50.





Table 2. - WORLD CRUDE OIL PRODUCTION IN FIRST HALF OF 1966

## World production topped 32 million b/d in first half 1966

(Daily average in thousands of barrels)

(Daily average in thousands of barrels)					(Daily average in thousands of barrels)				
Country—	First 6 months		%	First 6 months	Country—	First 6 months		%	First 6 months
	1966	1965				1966	1965		
<b>Western Hemis. (ex. U.S.)</b>					<b>Africa</b>				
Argentina . . . . .	285.0	269.9	5.6	280.0	Algeria . . . . .	677.3	556.9	21.6	550.0
Bolivia . . . . .	9.3	9.0	3.3	9.2	Angola . . . . .	15.0	21.6	-30.6	16.3
Brazil . . . . .	106.0	93.0	14.0	95.0	Congo . . . . .	1.2	1.8	-33.3	1.8
Canada . . . . .	875.6	785.0	11.5	731.0	Egypt . . . . .	123.5	118.0	4.7	120.0
Chile . . . . .	35.0	37.2	-5.9	38.2	Gabon . . . . .	27.4	24.3	12.8	20.0
Colombia . . . . .	197.0	201.8	-2.4	172.0	Libya . . . . .	1,444.5	1,188.4	21.5	753.0
Cuba . . . . .	0.2	0.2	—	0.2	Morocco . . . . .	2.2	2.5	-12.0	3.0
Ecuador . . . . .	7.3	8.0	-8.7	7.0	Nigeria . . . . .	354.5	218.0	62.6	86.0
Mexico . . . . .	334.0	326.5	2.3	315.0					
Peru . . . . .	54.4	63.4	-14.2	59.8	<b>Total . . . . .</b>	<b>2,645.6</b>	<b>2,131.5</b>	<b>24.1</b>	<b>1,550.1</b>
Trinidad . . . . .	146.0	132.4	10.3	139.0					
Venezuela . . . . .	3,467.0	3,458.1	0.3	3,360.0	<b>Other Asia</b>				
<b>Total . . . . .</b>	<b>5,516.8</b>	<b>5,384.5</b>	<b>2.5</b>	<b>5,206.4</b>	Australia . . . . .	10.3	6.3	63.5	4.0
<b>Europe</b>					Burma . . . . .	10.7	11.9	-10.1	12.9
Austria . . . . .	59.5	57.0	4.4	56.0	India . . . . .	81.0	60.0	35.0	43.0
France . . . . .	58.3	58.9	-1.0	54.0	Indonesia . . . . .	492.0	491.5	0.1	468.3
W. Germany . . . . .	155.8	152.2	2.4	150.0	Japan . . . . .	15.4	12.3	25.2	15.4
Italy . . . . .	35.0	53.4	-34.5	42.0	Malaysia . . . . .	70.0	73.4	-4.6	71.0
Netherlands . . . . .	46.5	42.5	9.4	42.0	Pakistan . . . . .	10.2	9.7	5.2	9.9
United Kingdom . . . . .	2.7	2.7	—	2.6					
Yugoslavia . . . . .	40.5	30.1	34.6	28.6	<b>Total . . . . .</b>	<b>689.6</b>	<b>665.1</b>	<b>3.7</b>	<b>624.5</b>
<b>Total . . . . .</b>	<b>398.3</b>	<b>396.8</b>	<b>0.4</b>	<b>375.2</b>	<b>Free World</b>				
<b>Middle East</b>					Foreign . . . . .	18,546.6	16,854.2	10.0	15,191.1
Abu Dhabi . . . . .	354.0	233.0	51.9	155.0	U.S.A. . . . .	8,254.4	7,796.8	5.9	7,695.1
Bahrain . . . . .	60.5	54.0	12.0	47.0					
Iran . . . . .	2,101.6	1,773.0	18.5	1,648.0	<b>Total . . . . .</b>	<b>26,801.0</b>	<b>24,651.0</b>	<b>8.7</b>	<b>22,886.2</b>
Iraq . . . . .	1,398.7	1,317.8	6.1	1,250.0	<b>Soviet orbit</b>				
Israel . . . . .	4.8	5.3	-9.4	4.1	Romania . . . . .	254.5	251.0	1.4	250.0
Kuwait . . . . .	2,255.0	2,269.0	-0.6	2,140.0	Russia . . . . .	5,106.8	4,673.0	9.3	4,300.0
Neutral Zone . . . . .	400.0	352.5	13.5	350.0	Others . . . . .	251.2	246.0	2.1	154.0
Qatar . . . . .	277.7	194.7	42.6	190.8					
Saudi Arabia . . . . .	2,411.0	2,051.0	17.6	1,634.0	<b>Total . . . . .</b>	<b>5,612.5</b>	<b>5,170.0</b>	<b>8.6</b>	<b>4,704.0</b>
Turkey . . . . .	33.0	26.0	26.9	16.0					
<b>Total . . . . .</b>	<b>9,296.3</b>	<b>8,276.3</b>	<b>12.3</b>	<b>7,434.9</b>	<b>World Total . . . . .</b>	<b>32,413.5</b>	<b>29,821.0</b>	<b>8.7</b>	<b>27,590.2</b>



## RIG ACTIVITY

	July 1966	Jan. 1966	July 1965
<b>LATIN AMERICA</b>			
Argentina .....	65	62	61
Barbados .....	1		
Bolivia .....	13	11	11
Brazil .....	55	51	66
Chile .....	5	5	5
Colombia .....	15	8	8
Cuba .....	1	2	2
Ecuador .....	3	4	4
Honduras .....	1	1	1
Mexico .....	97	61	94
Peru .....	13	6	8
Surinam .....	1		1
Trinidad .....	16	17	16
Venezuela .....	13	24	41
Total .....	299	252	318
<b>EUROPE</b>			
Austria .....	9	10	10
Denmark .....	1	1	
France .....	10	10	17
West Germany .....	46	51	69
Greece .....		1	1
Italy .....	18	30	31
Netherlands .....	6	5	18
Northern Ireland .....		1	
Norway .....	1	1	1
Spain .....	11	7	8
United Kingdom .....	17	7	6
Yugoslavia .....	26	24	26
Total .....	145	148	187
<b>MIDDLE EAST</b>			
Abu Dhabi .....	4	6	5
Bahrain .....	1	2	2
Dubai .....	1		
Iran .....	16	13	9
Iraq .....	1	2	2
Israel .....	5	9	6
Jordan .....			1
Kuwait .....	5	7	8
Lebanon .....	1	1	1
Neutral Zone .....	2	4	5
Oman .....	2	2	2
Qatar .....	1	3	2
Saudi Arabia .....	4	5	4
Sharja .....	1		
Syria .....	3	2	3
Turkey .....	15	1	13
Total .....	62	57	63
<b>AFRICA</b>			
Algeria .....	10	15	13
Angola .....	2	1	1
Cameroun .....			1
Congo (Brazzaville) .....	1		
Congo (Leopoldville) .....	1	0	0
Egypt .....	8	14	13
Ethiopia .....		1	
Gabon .....	3	2	3
Ghana .....	2		
Libya .....	21	27	44
Morocco .....	2	1	1
Mozambique .....	1	1	
Nigeria .....	15	15	15
Senegal .....	1		
Somalia .....			1
Spanish Sahara .....	1	1	
Sudan .....	1		
Tunisia .....	4	3	5
Total .....	73	81	97
<b>OTHER ASIA</b>			
Australia .....	17	18	28
Burma .....	6	2	
Brunei-Malaysia .....	3	3	4
India .....	47	23	23
Indonesia .....	13	10	11
Japan .....	26	25	28
New Guinea .....	1		1
New Zealand .....	2	1	1
Pakistan .....	11	6	5
Philippines .....	1		
Taiwan .....	6	3	4
Thailand .....	1	1	2
Total .....	134	92	107
<b>GRAND TOTAL</b> .....	<b>713</b>	<b>630</b>	<b>772</b>

Estimates are made where complete reports are lacking.

Source: The Oil and Gas Journal, August 8, 1966, p. 135.





In 1965 the trend was maintained notwithstanding that the United States, Canada, Colombia and the Middle East had significant increases.

The most noteworthy boosts were in Africa. Libyan production increased about 45% last year compared to 1964 and averaged well above a million barrels daily in 1965. Nigerian output increased about 125% last year compared to that of 1964 with the 1965 total reaching about 100 million barrels. Oil production from onshore Nigerian fields averaged or exceeded 300,000 bpd during the last three months of last year.<sup>4</sup>

Production from offshore Nigerian fields will substantially increase output in that country. Production is also likely to increase in Libya from existing and newly discovered fields. The recently completed pipe line from Haoud el Hamra to Arzew will increase Algerian production by 10 million tons a year.<sup>5</sup>

As shown in Tables 1 and 2, the oil producing countries of Africa are Libya, Algeria, Nigeria, Egypt, Gabon/Congo Brazzaville, Angola, Morocco and Tunisia, in the decreasing order of production. Production commenced in Tunisia before the middle of 1966. As will be seen from Table 3, exploration is in progress in these and other African countries. Tables 1 and 2 also show the relative position of Africa in world crude oil output.

A recent estimate of potential oil in place in Africa stands at 1,800 billion barrels, of which 1,100 barrels represent potential recoverable oil in place. The figures for natural gas are 5,400 and 3,400 trillion cubic feet



TABLE 4 - POTENTIAL GAS, OIL AND NATURAL GAS LIQUID RESOURCES OF THE WORLD

	Billion bbl		Trillion cu. ft.		NGL (Billions of bbls)	
	Oil	To be found	Gas	To be found	Liquid	To be found
United States	1,600	1,000	4,000	2,500	120	75
Canada, Mexico, Central America, Caribbean	500	300	3,500	2,200	40	25
South America	800	500	2,500	1,600	70	45
Europe	500	300	1,300	800	40	25
Africa	1,800	1,100	5,400	3,400	150	95
Middle East	1,400	900	3,600	2,200	120	75
South Asia	200	100	600	400	20	10
U.S.S.R., China, Mongolia	2,900	1,800	8,500	5,300	240	150
Australia, East Indies, Pacific Islands	300	200	1,100	700	30	20
WORLD TOTAL	10,000	6,200	30,500	19,100	830	520

Source: Oil and Gas Journal, February 7, 1966, p. 56. Data from U.S. Geological  
Circular 522.





TABLE 5

## Estimated Proved Crude Oil Reserves in World, by Countries

Figures compiled by WORLD OIL, with aid of oil companies and other sources.

Continent and Country	Reserves at Year End (Thousand Barrels)			Production in 1965		Ratio Reserves to 1965 Pro- duction
	1964	1965	1965 As % of World	Thous. Barrels	As % of World	
<b>North America</b> .....	39,749,156	40,557,576	11.1	3,258,939	29.6	12.4
Canada.....	6,177,646	6,711,237	1.8	292,494	2.6	22.9
Mexico.....	2,581,000	2,493,938	0.7	117,931	1.1	21.1
United States.....	30,990,510	31,352,391	8.6	2,848,514	25.9	11.0
<b>West Indies</b> .....	426,000	426,000	0.1	49,042	0.4	8.7
Cuba.....	1,000	1,000	....	183	....	5.5
Trinidad.....	425,000	425,000	0.1	48,859	0.4	8.7
<b>South America</b> .....	22,774,231	23,613,256	6.5	1,515,650	13.8	15.6
Argentina.....	2,200,000	2,900,000	0.8	98,279	0.9	29.5
Bolivia.....	500,000	500,000	0.1	3,367	....	148.9
Brazil.....	800,000	672,000	0.2	34,327	0.3	19.6
Chile.....	150,000	150,000	....	12,720	0.1	11.8
Colombia.....	1,500,000	1,700,000	0.5	73,378	0.7	23.2
Ecuador.....	25,000	25,000	....	2,919	....	8.6
Peru.....	350,000	300,000	0.1	23,068	0.2	13.0
Venezuela.....	17,249,234	17,366,256	4.8	1,267,602	11.5	13.7
<b>Western Europe</b> .....	1,719,000	1,692,000	0.5	128,437	1.2	13.2
Austria.....	237,000	237,000	0.1	19,397	0.2	12.2
France.....	185,000	190,000	0.1	21,706	0.2	8.8
Germany, West.....	700,000	700,000	0.2	65,976	0.5	12.5
Italy.....	10,000	10,000	....	803	....	12.5
Netherlands.....	280,000	280,000	0.1	16,349	0.1	17.1
Sicily.....	300,000	250,000	0.1	13,521	0.1	18.5
Spain.....	2,000	20,000	....	49	....	408.2
United Kingdom.....	5,000	5,000	....	636	....	7.9
<b>Eastern Europe</b> .....	34,383,000	36,267,900	9.9	1,899,142	17.2	19.1
Albania.....	60,000	70,000	....	5,692	0.1	12.3
Bulgaria.....	25,000	25,000	....	1,664	....	15.0
Czechoslovakia.....	18,000	16,650	....	1,356	....	12.3
Germany, East.....	12,000	12,000	....	584	....	20.5
Hungary.....	183,000	169,250	0.1	13,751	0.1	12.3
Poland.....	23,000	20,000	....	2,509	....	8.0
Rumania.....	885,000	792,000	0.2	93,101	0.8	8.5
*Russia.....	33,000,000	35,000,000	9.6	1,765,638	16.0	19.8
Yugoslavia.....	177,000	163,000	....	14,847	0.1	11.0
<b>Africa, Northern</b> .....	115,607,270	20,160,000	5.5	692,227	6.3	29.1
Algeria.....	6,000,000	6,300,000	1.7	201,349	1.8	31.3
Egypt.....	556,270	600,000	0.2	44,795	0.4	13.4
Libya.....	9,000,000	13,000,000	3.8	445,297	4.0	29.2
Morocco.....	11,000	10,000	....	786	....	12.7
Tunisia.....	140,000	250,000	0.1	....	....	....
<b>Africa, Western</b> .....	1,678,400	2,818,400	0.8	113,805	1.0	24.8
Angola.....	125,000	40,000	....	4,736	....	8.4
Congo (Brazzaville).....	3,400	....	....	533	....	6.4
Gabon.....	250,000	275,000	0.1	9,193	0.1	29.9
Nigeria.....	1,300,000	2,500,000	0.7	99,343	0.9	25.2
<b>Asia, Middle East</b> .....	214,742,000	228,277,000	62.5	3,051,266	27.7	74.8
Abu Dhabi.....	6,500,000	7,500,000	2.1	102,896	0.9	72.9
Bahrain.....	250,000	250,000	0.1	20,787	0.2	12.0
Iran.....	37,000,000	40,000,000	11.0	688,214	6.3	58.1
Iraq.....	26,000,000	30,000,000	8.2	480,032	4.3	62.5
Israel.....	20,000	20,000	....	1,469	....	13.6
Kuwait.....	70,000,000	70,000,000	19.2	791,003	7.2	88.4
Neutral Zone.....	10,000,000	10,000,000	2.7	131,717	1.2	75.9
Qatar.....	3,750,000	3,800,000	1.0	84,335	0.8	45.1
Saudi Arabia.....	59,172,000	63,707,000	17.5	739,078	6.7	86.2
Syria.....	500,000	500,000	0.1	....	....	....
Turkey.....	550,000	500,000	0.1	10,834	0.1	46.2
Miscellaneous.....	1,000,000	2,000,000	0.5	....	....	....
<b>Asia, Far East</b> .....	1,688,700	2,129,000	0.6	93,079	0.8	22.9
Burma.....	46,000	60,000	....	4,425	....	13.6
China.....	800,000	1,000,000	0.3	57,500	0.5	17.4
India.....	775,000	1,000,000	0.3	22,546	0.2	44.4
Japan.....	40,000	40,000	....	4,295	....	9.3
Pakistan.....	27,000	27,000	....	4,168	....	6.5
Taiwan.....	400	1,000	....	131	....	7.6
Thailand.....	300	1,000	....	14	....	71.4
<b>Oceania</b> .....	18,969,650	9,020,050	2.5	209,003	1.9	43.2
Australia.....	160,000	70,000	....	2,613	....	26.8
Brunei-Malaysia.....	409,600	450,000	0.1	29,343	0.3	16.3
Indonesia.....	8,500,000	8,500,000	2.4	177,043	1.6	48.0
New Zealand.....	50	50	....	4	....	12.5
<b>Total, World</b> .....	1,341,737,410	364,961,182	100.0	11,010,590	100.0	33.1

\* Includes Asiatic Russia and Sakhalin Island.

† Revised

Source: World Oil, Vol. 163, No. 3 (August 15, 1966), p. 93.





TABLE 6

## Estimated Proved World Reserves of Natural Gas, by Countries

(Billions of Standard Cubic Feet. For Actual Cubic Feet Add 000,000,000.)

Continent and Country	End of 1965	End of 1964	End of 1961*	Continent and Country	End of 1965	End of 1964	End of 1961*
<b>North America</b> .....	<b>342,091</b>	<b>336,152</b>	<b>321,000</b>	<b>Middle East (Continued)—</b>			
United States.....	286,469	281,251	275,000	Iraq.....	22,000	21,500	22,500
Canada.....	44,372	43,391	36,000	Israel.....	50	50	40
Mexico.....	11,250	11,510	10,000	Kuwait.....	35,000	35,000	33,000
<b>West Indies</b> .....	<b>1,200</b>	<b>1,200</b>	<b>1,200</b>	Neutral Zone.....	4,000	4,000	2,000
Trinidad.....	1,200	1,200	1,200	Oman.....	1,500	500	.....
<b>South America</b> .....	<b>50,055</b>	<b>49,310</b>	<b>43,600</b>	Qatar.....	8,000	8,000	7,500
Argentina.....	8,000	6,500	6,000	Saudi Arabia.....	56,438	52,000	45,000
Bolivia.....	2,000	2,000	250	Syria.....	350	300	80
Brazil.....	671	500	350	Turkey.....	50	50	35
Chile.....	2,800	3,500	1,800	<b>Asia, Far East</b> .....	<b>26,100</b>	<b>23,200</b>	<b>16,406</b>
Colombia.....	4,500	4,000	1,400	Afghanistan.....	3,000	2,000	.....
Ecuador.....	65	65	75	Burma.....	200	150	150
Peru.....	2,000	2,000	725	India.....	2,000	1,500	745
Venezuela.....	30,019	30,745	33,000	Japan.....	700	700	500
<b>Western Europe</b> .....	<b>66,865</b>	<b>64,093</b>	<b>18,955</b>	Pakistan.....	20,000	18,750	15,000
Austria.....	1,000	936	850	Taiwan.....	200	100	10
France.....	8,800	9,000	9,000	Thailand.....	.....	.....	1
Germany, West.....	7,000	6,000	1,500	<b>Oceania</b> .....	<b>7,700</b>	<b>5,660</b>	<b>3,208</b>
Italy.....	4,700	4,800	4,650	Australia.....	4,300	1,960	4
Netherlands.....	45,000	43,000	2,600	Brunei—Malaysia.....	700	600	450
Sicily.....	350	350	350	Indonesia.....	2,000	2,000	2,000
Spain.....	5	.....	.....	New Zealand.....	200	600	300
United Kingdom.....	10	7	5	Papua.....	500	500	450
<b>Africa, Total</b> .....	<b>76,579</b>	<b>67,499</b>	<b>54,443</b>	Philippines.....	.....	.....	1
<b>Africa, Northern</b> .....	<b>73,317</b>	<b>65,527</b>	<b>54,145</b>	West New Guinea†.....	.....	.....	3
Algeria.....	65,000	60,000	50,000	<b>Sub-Total, Free World</b> .....	<b>789,108</b>	<b>753,644</b>	<b>637,097</b>
Egypt.....	500	500	425	<b>Communist Countries, Total</b> .....	<b>109,165</b>	<b>114,202</b>	<b>84,353</b>
Libya.....	7,500	5,000	3,700	<b>Eastern European Countries</b> .....	<b>11,853</b>	<b>12,828</b>	<b>7,353</b>
Morocco.....	17	17	10	Albania.....	35	35	20
Tunisia.....	300	10	10	Bulgaria.....	1,060	1,060	8
<b>Africa, Western</b> .....	<b>3,262</b>	<b>1,972</b>	<b>298</b>	Czechoslovakia.....	488	530	1,600
Angola.....	100	120	7	Germany, East.....	500	500	.....
Congo (Brazzaville).....	2	2	5	Hungary.....	1,031	1,060	300
Gabon.....	160	150	30	Poland.....	500	920	500
Nigeria.....	3,000	1,700	250	Rumania.....	7,316	7,770	4,800
Senegal.....	.....	.....	6	Yugoslavia.....	923	953	125
<b>Middle East</b> .....	<b>218,518</b>	<b>206,530</b>	<b>178,285</b>	<b>Eurasian-Asian Countries</b> .....	<b>97,342</b>	<b>101,374</b>	<b>77,000</b>
Abu Dhabi.....	6,000	5,000	3,000	China.....	3,500	3,000	2,000
Bahrain.....	130	130	130	USSR (Russia).....	93,842	98,374	75,000
Iran.....	85,000	80,000	65,000	<b>Total, World</b> .....	<b>898,273</b>	<b>867,846</b>	<b>721,450</b>

\* End-of-1961 figures compiled by Lewis G. Weeks (see WORLD OIL, August 15, 1962, Page 90).

† Now part of Indonesia

Source: World Oil, Vol. 163, No. 3 (August 15, 1966), p. 95.



respectively. From Table 4, the relative position of Africa in terms of potential reserves and recoverable oil and gas is impressive.<sup>6</sup> The recoverable reserves in Saharan portions of Algerian and Libya in an area of one million square kilometers were estimated at 500 million tons of oil and 1,500 billion cubic meters of gas; reinjection of gas is capable of adding another 300 million tons of recoverable reserves.<sup>7</sup>

As at the end of 1965, the relative positions of Africa as regards proved world reserves of crude oil and of natural gas are shown in Tables 5 and 6. If the figure for the potential crude oil in place in Africa as shown in Table 4 is compared with the figure for proved crude, it will be seen that only about 0.002 per cent of the potential oil in place has been proven. Therefore, only an insignificant fraction of the potential oil in place in Africa has so far been discovered. A comparison between Table 4 and Table 6 shows that the above remark is also true as regards natural gas. The efforts currently being made to explore for and produce oil and gas, and the encouraging results being obtained, appear to be a beginning of an era in the economic life of many African countries. It is reasonable to expect that, for many years to come, petroleum activity in Africa will be continued and, perhaps, intensified.

Perhaps the significance of this study lies in the fact





that it seeks to find out (1) the legal framework within which petroleum operations are undertaken during the initial stage of what promises to be a dynamic future, and (2) the indications that the present petroleum laws and concession contracts give as regards the patterns of the future legal framework for the acquisition of oil and gas rights in the countries of Africa.

Crude oil import from Africa to Britain is on the increase, totalling 1,295 million gallons or 9.5 per cent of all crude imports in 1962.<sup>8</sup> Increased production from African countries, especially from Algeria and Libya, is beginning to offer competition to Middle East production in European markets. As happened in December, 1966, when the government of Syria stopped the pipe line operations of the Iraq Petroleum Company, crude oil imports from North Africa are usually stepped up to supplement reduced imports from the Middle East if production or transportation is disrupted in any of the producing or transit countries of the Middle East.

Algeria and Libya export natural gas to Europe. Algerian commercial gas production in 1964 totalled 808 million cubic meters.<sup>9</sup> Her natural gas export to the United Kingdom amounted to 1,000 million cubic meters a year and to France, she exported 1,500 million cubic meters a year.<sup>10</sup> Arrangements are almost complete for the export of natural gas to Italy and





Spain. Nigerian export of natural gas to Britain was scheduled to begin by early 1968 but negotiations were suspended pending a market survey, because of the recent discoveries of huge deposits of natural gas in the North Sea. Libyan natural gas export is mainly to Spain<sup>11</sup> (110 million cubic feet daily) and Italy (235 million cubic feet daily).

With the facts mentioned above as background, it becomes easy to appreciate why there has emerged such a fast growth of petroleum legislation in Africa within such a comparatively short period of petroleum activity. To many of the countries, especially in North Africa, petroleum products are not only strategic substances but also the most important factor in their economies. The effort seems to be to make petroleum laws keep pace with the rapid development of the industry. To a large extent, this is a process of trial and error for a continent in a hurry.

### III. LEGAL SETTING

A legacy of colonial rule in Africa is the co-existence of imported with indigenous law. The former comprises the two European legal systems of Civil Law and Common Law with their varying juridical concepts. The latter comprises Customary Law, Islamic Law and in some localities, a mixture of the two. Customary Law varies from country to country and from one





autonomous or ethnic group to another. Into the system of indigenous laws were imported the two western systems during the colonial era. In present times, western legal concepts and institutions are still being received into African legal systems particularly in the fields of commercial relations.

In the sense of the existing law before the arrival of colonial powers, indigenous law is seldom in evidence in African petroleum legislation. The only exceptions that one calls to mind are the provisions relating to the acquisition of surface rights in certain restricted areas such as sacred lands, market places, groups of dwellings, burial grounds, communal or village lands and related areas. Instead, the substance and the diversities of petroleum legislation in Africa derive almost exclusively from colonial legislation. Post-independence petroleum laws abound, but there has not been, so to say, a clean sweep of the old. Colonial legislation still forms the basis of petroleum laws in most African countries. It is not to be understood that innovations or radical changes have not been introduced since independence. For example, provisions relating to the eligibility of an applicant for petroleum rights have been broadened to make room for operations by persons of different nationalities. Under some laws (Algeria, Egypt, Cameroon, Gabon, Tunisia) the State may undertake petroleum activities either alone or in





association with private persons. Typically, stricter regulatory and fiscal measures have been introduced since independence.

### Classification

Of the countries with which this study is concerned, the petroleum laws of French-speaking African countries, together with those of Spanish Sahara, Angola, Morocco, Tunisia and Mozambique comprise the civil law group. Those of the English-speaking African countries including Liberia comprise the common law group. The third and last group is better classed as "others" because, irrespective of their background, they differ in important respects among themselves and from the first and second groups.

In the civil law group, Spanish Saharan and Portuguese Angolan hydrocarbon laws and those of Morocco and Tunisia are different from those of French-speaking Africa and are best included in the third group of petroleum laws.

Of the French-speaking African nations, Cameroon, Gabon, Mali, Niger, Senegal and Chad have instituted, since independence, their own petroleum codes or general mining codes with special provisions for hydrocarbons. However, they are based on, or at any rate draw very largely from, the colonial legislation similar to the Saharan Petroleum Code.



The rest retain colonial petroleum laws similar to the Algerian Sahara Code with minor changes (Dahomey, Upper Volta, Mauritania).<sup>12</sup>

In sum, there is much uniformity in related provisions of petroleum laws in French-speaking Africa; some countries have enacted local codes to replace colonial hydrocarbon or mining codes but retain the basic concepts of colonial codes.

In the English-speaking countries except Liberia, the petroleum laws are substantially the colonial laws; none has enacted a different petroleum law since independence. Except in Liberia, their petroleum laws are essentially similar. Some of the powers and discretions given by colonial laws have been made more specific by Government Notices (Nigeria) or by the legislature confirming a particular concession, the terms of which serve as a model (Sierra Leone, Somalia).

The petroleum law of Libya and the mining Law of Egypt, while drawing from Western legal concepts, are quite unique in some respects. In order to bring out the unique feature of each more clearly, they are put into the third group.

Cameroon and Somalia present situations different from the rest.<sup>13</sup> The present Republic of Cameroon comprised Southern Cameroon, formerly a British Trust Territory administered as a unit of Nigeria, and Cameroun, formerly a Trust Territory under French administration. The laws of the present West





Cameroun (formerly Southern Cameroon), like Nigeria, were of the British colonial system whereas East Cameroun was of the French legal system. Thus there is the existence of the background of Civil Law and Common Law in addition to indigenous law in the same country. However, the Mining Code of the Federal Republic of Cameroun is similar to the French colonial mining law and is best classed with French-speaking countries. The existence of the two kinds of Western law occurs also in Somalia. The post-unification and independence Mining Ordinance of August 15th, 1961, is essentially the Mining Ordinance of the former Trust Territory of Somalia under Italian administration, and not that of the former British Somaliland. The petroleum law of Somalia is classed among the special cases in group three.

The final classification, therefore, is as follows:

- GROUP 1      The Petroleum Codes and the Mining Codes (with special provisions for liquid and gaseous hydrocarbons) of French-speaking Africa (Algeria, Cameroon, Chad, Gabon, Mali, Niger and Senegal)
- GROUP 2      The Petroleum or Mineral Oil Ordinances of English-speaking Africa and Ethiopia (Ethiopia, Ghana, Kenya, Liberia, Nigeria and Sierra Leone)





GROUP 3      Special Cases comprising the petroleum or hydrocarbon laws or codes of Angola, Egypt, Libya, Morocco, Mozambique, Somalia, Spanish Sahara and Tunisia.

The charts in Appendix I showing a comparison of the provisions for the acquisition of petroleum rights are based on this classification as well as on the petroleum laws of most oil producing countries of Africa.



## CHAPTER II

### OWNERSHIP OF OIL AND GAS

This chapter examines the provisions of petroleum laws on the ownership of oil and gas in place as well as the establishment of governmental agencies for the administration of petroleum resources. Provisions dealing with the stages of petroleum operations, usually connected with those on ownership, will also be considered in the present chapter.

#### I. BASIS OF STATE OWNERSHIP AND CONTROL

The petroleum legislation of some of the countries (Angola, Libya, Morocco, Spanish Sahara, Tunisia) has provisions under which all petroleum in place is the property of the state. Provisions dealing with state ownership of all mineral substances in place, including petroleum and related substances, are found in the mining laws or the constitutions of some of the countries, mostly those without separate petroleum legislation (Cameroon, Egypt, Gabon, Liberia, Nigeria, Somalia). Exceptions are made in most cases to enable owners of the surface to exploit deposits of non-metallic building materials, salt, fertilizers and similar substances in or underneath their land, without licence or permit.

State ownership in these cases is at the federal or





national level and is exercised by or under the authority of the federal, central or national government. It is similar to the situation in Canada where the Dominion Government of Canada exercises jurisdiction over mineral resources in the public domains of the Northwest Territories.

The petroleum laws of all the countries, whether in separate petroleum legislation or mining codes, provide that no person whatsoever shall undertake exploration, prospecting, exploitation or other petroleum operations unless by virtue of a permit, licence, lease or concession issued under the authority of the State. Some legislation has only the provision which prohibits petroleum operations unless authorized by the State without specifically vesting in the State all petroleum in place.

### Illustrations

#### Group 1

##### Algeria

Article 1. ...prospecting and exploration operations for liquid and gaseous hydrocarbons may not be undertaken, even by the owner of the surface, except pursuant to:

- a prospecting authorization; or
- an exclusive exploration permit designated as an H permit.<sup>14</sup>

##### Cameroon

Article 4(i). The ownership of mines is distinct from that of the surface and vests in the State.<sup>15</sup>



Gabon

Article 5. No physical or juridical person can carry out prospecting operations for concessionary substances without having previously obtained a mine prospecting authorization, a mine exploration permit or a mine exploration deed.<sup>16</sup>

## Group 2

Liberia

Section 2. Mineral substances of all kinds...which may be found in the soil or subsoil in the National Territory are property of the State and anything pertaining to their development and use will be governed by the provisions of this law.<sup>17</sup>

## Group 3

Nigeria

Section 3(i). The entire property in and control of all minerals, and mineral oils, in, under or upon any lands in Nigeria, ...is and shall be vested in the State.<sup>18</sup>

Egypt

Article 2. All raw minerals existing in mines and quarries of the Egyptian Kingdom, including the territorial waters, are considered as State property.

Article 5. It is forbidden to carry out exploration, reconnaissance, prospection or exploration work for minerals...except by virtue of a licence.<sup>19</sup>

Libya

Article 1(i). All petroleum in Libya in its natural state in strata is the property of the Libyan State.<sup>20</sup>

No person shall explore or prospect for, mine or produce petroleum in any part of Libya, unless authorized by a permit or concession issued under this Law.<sup>21</sup>

The petroleum laws of some countries apply to the mainland and submarine areas beneath territorial waters as well as





the continental shelf (Morocco, Libya, Nigeria). In 1959 the Mineral Oils Ordinance of Nigeria was amended (section 10) to the effect that the Ordinance applies also to

...submarine areas beneath any other waters which are or at any time shall become subject to the legislative competence of the Legislature of the Federation in respect of mines and minerals.<sup>22</sup>

Article 3 of Dahir Nol-58-227 (July 21, 1958) of Morocco is more specific:

The Continental Shelf, within the meaning of the present Dahir, comprises the seashore and the subsoil of the submarine regions adjacent the coasts of the territories of Morocco, located even without the zone of the territorial waters, to a depth of 200 meters or beyond this limit to the point where the depth of the waters permit exploitation of the hydrocarbon deposits of said regions.

The application of the Petroleum Law, 1955 (Libya) extends to the "seabed and subsoil which lie beneath the territorial waters and high seas contiguous thereto". However, jurisdiction was actually extended over natural resources of the submarine areas of the continental shelf in 1960.<sup>23</sup>

It is a common feature of most petroleum laws that the country is divided into petroleum areas or zones. The circumstances that prompt such division vary in importance from country to country but, as a general rule, petroleum laws tend to serve a number of objectives in this regard. Briefly, more favorable terms are laid down for the grant of petroleum rights where exploration and development are difficult owing





to harsh climate, transportation problems and geographical conditions. Thus desert areas are differentiated from other areas and off-shore areas are differentiated from on-shore areas (Algeria, Egypt, Libya and Nigeria, Morocco, Gabon). Smaller land rentals and lower royalty rates are usually laid down for operations in such difficult areas. Royalty rates and rentals are generally higher for operations in areas with commercial production and those proven to be geologically favorable than for unproven areas. Zoning provisions are sometimes used to create reserve areas for exploitation by national companies or by the state. In some cases, zoning provisions are also for administrative convenience and revenue considerations.

## II. STAGES OF OPERATIONS

With few exceptions, the petroleum laws provide for three stages of petroleum operations:

1. Reconnaissance, for which permits are issued entitling the holder to make surface, geological and geophysical explorations including core drilling;
2. Exploration or Prospecting, for which licences are issued entitling the holder to make underground investigation including drilling of wells and test drilling. Typically, production is not permitted at this stage;
3. Exploitation, for which an oil and gas lease or concession





is granted, giving the holder the right to produce commercially.

As regards this broad classification, it is to be borne in mind not only that terminology varies but also that there are exceptions to the three-stage system of operations. The French-speaking African countries (Algeria, Gabon, Mali, Niger, Chad), for example, have petroleum laws which designate the first stage as "Prospecting Authorization" and also provide for a Provisional Exploitation Authorization for a period of two years during the life of an Exploration Permit.<sup>24</sup> In Nigeria, the stages are exploration, prospecting and exploitation, and in Somalia, the first stage is prospecting and a "Research Permit" is granted for the second stage. The Petroleum Law, 1955 (Libya) provides for only two stages, namely, Reconnaissance Permit and Concession. The latter covers exploration and exploitation. Spanish Sahara and Tunisia have only Exploration and Exploitation stages. As will be shown later, grants of direct exploitation rights are possible under some laws through the system of competitive bidding for government reserves, in concessions granted in derogation of the controlling law but authorized by it, or under the controlling law where the authorities are satisfied that petroleum exists in exploitable quantities (Egypt).

It is to be noted also that some rights encompassed in





permits and licences in one country may be excluded from similar grants in another. Thus the Law on Mines and Quarries, 1953 (Egypt) gives the holder of an Exploration Permit no right to produce oil and gas, but the holder of an oil Prospecting Licence in Nigeria is allowed "to carry away and dispose of petroleum and petroleum produces".<sup>25</sup>

The final observation is that it is difficult to arrive at a clear legal distinction between the meanings of the term "leases" and of the term "concessions" as used in the various legislation. In some the term "concession" is used as embracing all three stages of petroleum operations as in "The Terms of Concessions in the Western Desert" (Egypt) in which all three stages are covered; in others, as synonymous to the term "lease" (Somalia). Moreover, "concession" as found in the laws and concession contracts in Africa lacks a number of the characteristics of Middle East concessions. For example, in Africa, much smaller areas and shorter primary terms are granted and multiple operators as opposed to monopoly concessions are the rule. Any semantic distinction between "lease" and "concession" is perhaps far less important than a knowledge of the rights granted and the obligations imposed by the laws and the granting document.





### III. GOVERNMENT AGENCY

Another common feature of all the legislation under discussion is that of a high level of governmental authority for the formulation of petroleum policy and the grant of petroleum rights. In Algeria, Egypt, Liberia, Libya and Sudan, special semi-autonomous statutory bodies are created and given powers to determine policy and advise the government as to the granting of petroleum rights which rests with the government. The function of the Supreme Petroleum Affairs Council within the Ministry of Petroleum Affairs (Libya) includes the establishing of a petroleum policy, studying the laws and regulations and forwarding opinions to the Minister.<sup>26</sup> As an example of the high level composition of the statutory bodies, Liberia has a Mining Board consisting of the Director of Mines and Geology as Chairman, the Solicitor-General, the Under Secretary of Public Works and Utilities, the Economic Adviser and the Commissioner of Labor. There is also the Bureau of Mines whose function it is to administer the Mining Laws and matters pertaining to natural resources.<sup>27</sup> The function of the Board includes the approval of application for exclusive permits and leases "transmitted by the Director of Mines and Geology",<sup>28</sup> and advising the President on tariffs related "to the materials with which the Law is concerned."<sup>29</sup>





No special agency is created in other countries, regulation and control of the industry being carried out through the Ministry in charge of mines, power, commerce or industrialization, as the case may be. As an administrative convenience, a distinct and specialized division of the Ministry takes charge of petroleum affairs (e.g. Angola, Nigeria, Sierra Leone). Whether or not a specialized agency is established, individual grants of permits, licences, leases and concessions are typically subject to a decree. (French-speaking African Countries), or to approval of the Council of Ministers (Libya, Nigeria) or a ratification by the legislature as in the Tennessee Sierra Leone Mineral Oil Agreement (1962) (Ratification) Act, 1962. (grants to foreigners in Liberia, Tunisia). In all the countries, petroleum resources are administered by high ranking bodies and grants are authorized at a high level.

#### IV. COMMENT

A study of the provisions dealing with ownership of oil and gas in place leads to at least three conclusions. The first is that in most of the jurisdictions there is a clear severance of surface from subsoil rights so as to vest oil and gas in the state.<sup>30</sup> Secondly, in other jurisdictions in which there are no special provisions vesting all petroleum in place in the state, the governments have achieved de facto ownership



through a system of permits and regulations. In consequence, petroleum development operations are subject to the acquisition of subsoil rights only from government authorities and not from the private persons or the communities who own or are in lawful occupation of the surface. This situation is similar to that in the Middle East where petroleum rights can only be granted by the Sovereign who owns the resources. With respect to the surface land in private ownership or lawful occupation, the operator must acquire his rights from the private person and cannot embark on his operation unless he obtains right of entry either from that private person or the government, or from the former subject to the approval of the latter.

Thirdly, having made the disposition, the government stands vis a vis the operator, as the contractor and legislator - two capacities that are sometimes in conflict. A consideration of what the rights are, the procedure for the grant and the conditions attached thereto, will be the subject of subsequent chapters.





## CHAPTER III

### RECONNAISSANCE AND EXPLORATION STAGES

In modern Africa there is a growing body of legislation laying down the conditions and procedures for the acquisition of petroleum rights. As a result, the type of ad hoc negotiations for concessions that was the practice in the early days of the industry in the Middle East is not the practice in almost all African countries with which this study is concerned. There is still room for negotiations, but they are normally within the guidelines set by the general or a special petroleum legislation. A notable exception is Ethiopia which has no general petroleum laws. This topic of ad hoc negotiations is discussed in Chapter IV whereas in this chapter, provisions of the controlling laws governing the grant of permits and licences will be examined. The basic qualification of an applicant for reconnaissance and exploration rights and the formal requirements he must fulfil are, in most of the laws, essentially similar; therefore, these qualifications and requirements will be dealt with together before considering them separately in the two stages of reconnaissance and exploration.

At the risk of repetition, the authority given for the first stage is termed "Prospecting Authorization" in most



legislation in Group 1; in others it is called "Prospecting Licence" (Cameroon). In Group 2 and Group 3, some petroleum laws term the first stage "Exploration Permit" (Nigeria) and others call it "Reconnaissance Permit" (Egypt). A similar confusion occurs in the terminology of the second stage: Prospecting Licence (Nigeria), Exploration Permit (Group 1), Exploration Licence (Egypt) and Research Permit (Somalia).

## I. ELIGIBILITY OF APPLICANT

### Basic Qualifications

None of the petroleum legislation imposes a restriction based on nationality; nationals and foreigners are eligible for grants or permits and licences. However, as shown in Chart 1 of the Appendix, some provisions are especially applicable to foreigners or place nationals in a more favorable position. For example,

Egyptians shall have priority over Non-Egyptians in obtaining prospecting licences in case it is not possible to determine the priority as provided in Article 7; likewise, Egyptians shall also have the priority in obtaining prospecting licences and Mining Leases through public auctions in case of parity of offer.<sup>31</sup>

Qualifications regarding incorporation under national laws

(Spanish Sahara), domicile (Spanish Sahara), election of

domicile in the host country (Egypt, Morocco, Tunisia),

registration (Algeria, Libya, Nigeria), establishment of main





business office in the host country (Gabon, Angola), residence (Somalia) and the appointment of a resident attorney, are commonly demanded from foreign companies. Like other companies doing business in the host country, oil companies have to comply with the provisions of Commercial Codes and Investment Laws or Codes for establishing business in the country, which provisions are outside the scope of this study.

With one exception, the laws place no restriction on the ownership of the applicant company. The exception is the Hydrocarbon Act (Spanish Sahara) which provides that permits may not be applied for or granted to a foreign government or its intermediary or a company which is more than one third controlled by a foreign government.<sup>32</sup> In Angola, applicants who are not Spanish nationals must sign a waiver of their national rights and operate under Spanish legislation.<sup>33</sup> Natural and juristic persons are eligible for grants and joint applications are acceptable in most cases, but natural persons are in most cases required to form companies before they commence operations. In Morocco only juristic persons are eligible. The petroleum legislation of all the countries make technical and financial capacity of the applicant to undertake exploration operations a condition that must be satisfied before a permit or licence is issued.

Under some laws (Cameroon, Gabon) persons sentenced to





imprisonment for mining offences or offences against possession, custody or movement of mineral substances are ineligible for grants of petroleum rights.<sup>34</sup> Under the Mining Code of Gabon the disqualification is for a period of three years from the day on which the sentence became final.

It seems that an applicant whose national laws or a company controlled directly or indirectly by persons whose national laws do not permit Nigerian nationals to hold petroleum rights on terms comparable to those offered under Nigerian Law, may not be granted a licence.<sup>35</sup> In some petroleum laws (Group 2) persons in government service are prohibited from holding petroleum rights either directly or indirectly.

## Illustrations

### Algeria

Article 5. The H permit [exclusive right to explore and to acquire a development concession] may be granted only to a commercial company, or jointly to several commercial companies. However, a permit may be granted to a person or to a group of persons not organized as a commercial company provided that such a person or group of persons substitute for themselves a commercial company within a period fixed in the granting decree.

Article 6. No one may obtain an H Permit unless he gives evidence of technical and financial capacity necessary for effective exploration.<sup>36</sup>

### Liberia

Article 8. Any person of legal age or association of such persons or any corporation, national or foreign, may make application for prospecting and mining rights.<sup>37</sup>





Egypt

Article 25. Reconnaissance permits shall only be issued to those able to undertake such operations....<sup>38</sup>

Libya

The Commission shall consider applications for permits or concessions submitted by eligible applicants only, and in determining the eligibility of any applicant, the Commission shall have regard to the following:

- (a) the furtherance of the public interest;
- (b) (i) the applicant's compliance with the relevant laws and Regulations;
- (ii) his previous activities in the petroleum industry;
- (iii) his previous experience in the conduct of similar operations;
- (iv) his financial and technical capacity to conduct the contemplated operations.<sup>39</sup>

Formal Requirements

The petroleum laws and regulations of almost all the countries stipulate a number of formal or administrative requirements for the grant of permits and licences. A glance at Chart 1 of Appendix 1 will show that, typically, the requirements relate to evidence of basic qualifications such as the applicant's nationality, residence, domicile, registration, and financial and technical capacity. In general, an applicant company must furnish detailed information of its incorporation, financing, management and control including the name, occupation, nationality and domicile of the Chairman and of each member of the Board of Directors, partnerships and the manager authorized to sign for the company. Evidence of power





of attorney is always required in every application made on behalf of a company or group of persons.

The laws of all the countries demand a detailed or general program and time schedule of work to be performed in the areas for which the application is made. Details of annual expenditure are always required. It is provided in some regulations that the applicant must enter into a number of undertakings such as to supply reports, maps, well-logs and samples to the government (Nigeria); in others no such requirement appears but similar undertakings are normally included in the terms of the contracts. In some countries (Egypt, Spanish Sahara) successful applicants are required to produce a bank guarantee or a receipt of payment to cover all obligations, fines and sanctions imposed by law. Maps of the area for which the application is made, on prescribed scales, must also be attached to the application.

The area applied for must conform to the shape prescribed in the law or regulations. The shape of exploration areas is usually quadrilateral and bounded by lines either north-south, east-west, north-east, south-west, or north-west, south-east (Group 2); or cover a number of rectangles formed by geographic parallels (Group 1) spaced as provided in the regulations. Minimum widths and lengths are specified by most petroleum laws.





As one would expect, fees are payable on the issue of permits. Some laws provide for the payment of a bonus or premium on the grant of preliminary reconnaissance permits<sup>40</sup> (Libya) or prospecting licences<sup>41</sup> (Nigeria).

## II. RECONNAISSANCE STAGE

Permits or licences for reconnaissance work are normally granted for this stage and carry a non-exclusive right to preliminary or surface exploration. Typically, preliminary exploration work is a prerequisite to a grant of an exclusive exploration permit over defined areas. Reconnaissance permits are in all cases not transferrable and non-assignable but are renewable. They confer no right to drill or produce, nor to a grant of prospecting permit, lease or concession. However, preference in acquiring such rights may be given to a holder of a Reconnaissance permit. Reconnaissance permits cover larger areas than exploration licences and several reconnaissance permits may be granted over the same area to different holders.

### Rights Granted

The permit gives the holder the right to carry out surface and aerial geological and geophysical surveys with a view to the discovery of indications of liquid and gaseous hydrocarbons. All the petroleum laws give this right; some give



the right of renewal. It is noteworthy that the Law on Mines and Quarries (Egypt) provides in Article 25 that "The reconnaissance permit shall not entitle its holder to any right or privilege".

### Area

Most of the petroleum laws in Group 1 have no provision restricting the maximum area allowed under a Prospecting Authorization. In Group 3, the laws of Libya and Somalia have no maximum area provision; in Egypt the maximum allowed is at the discretion of the Minister of Commerce and Industries as provided in the granting decree. In Gabon (Group 1) the area allowed is one or more zones as defined by the granting decree.<sup>42</sup> Maximum areas are defined in the laws in Group 2, e.g., 10,000 square miles in Nigeria,<sup>43</sup> 4,000 square miles in Sierra Leone,<sup>44</sup> 250 square miles per block in Liberia.<sup>45</sup>

Although maximum areas are laid down in the laws of many countries, most of them lack provisions restricting the maximum number of permits an applicant may hold simultaneously. Reconnaissance areas are generally large but there is no common factor among the laws on the size of holdings.

### Duration

In all the laws, the permit is for a short period, usually one year (all Groups), and is renewable. Exceptions





include Egypt, in which the duration is fixed by the Minister; Algeria, in which the period is six months renewable for successive six month periods but the number of renewals is not specified; Gabon, in which the period is five years at the most. Article 6 of the Petroleum Law, 1955 of Libya makes no mention of the maximum number of renewals allowed. The petroleum laws of Nigeria and Liberia allow only one renewal for one year. In most cases renewals extend over the same areas as were covered by the original permits, but in some (e.g. Morocco), it may be limited to only part of the permit area.<sup>46</sup>

It is apparent from the provisions relating to duration of permits and licences that they aim at preventing the tying up of land for long periods in the hands of few operators. This is only one method by which the laws try to achieve rapid and extensive exploration by as many operators as possible. Other provisions with this aim such as those on surface rents, area relinquishment and work obligations will be examined in due course.<sup>47</sup> These provisions are mentioned at this stage so as to indicate an African trend away from the Middle East tendency in the past to grant concessions over large areas for long durations to few companies.



## Illustrations

### Group 1

#### Gabon

Article 4. There is understood by "prospecting" the operation which consists in carrying out surface investigations with the possible use of geophysical methods for the discovery of indications of concessionary substances.<sup>48</sup>

### Group 2

#### Nigeria

Rights - 1. This [Oil Exploration] licence gives the holder the right to undertake geological and geophysical exploration for oil over land and territorial waters of Nigeria excluding land approved for or already granted to operators and land for which a premium is being charged.<sup>49</sup>

2. No right to the subsequent grant of Oil Prospecting Licence or Oil Mining Lease is given or implied...

3. No right is given to the holder to dispose of any petroleum or petroleum products.

4. The licence does not give the holder any exclusive right over the area of the licence.<sup>50</sup>

### Group 3

#### Egypt

Reconnaissance means roaming to select the areas for which applications for prospecting for raw combustibles are to be made.<sup>51</sup>

#### Libya

Preliminary exploration for petroleum includes surface geological reconnaissance, aerial and surface geophysical operations commonly used in the petroleum industry. The drilling of exploration wells, mechanical core drilling and seismic operations will not be allowed under this permit.<sup>52</sup>





### Fees, Rentals, Bonus and Work Obligations

Not all the laws prescribe that fees, rentals, bonuses or deposits are payable for the issue of reconnaissance permits. In Group 1 as well as some laws in Group 3, no rentals, bonuses, or fees are required whereas in most of Group 2 and Group 3 fees or bonuses are prescribed.<sup>53</sup> However, administrative fees are provided for in most of the laws to cover overhead costs. The Petroleum Law, 1955, of Libya provides that a fee of 500 Libyan pounds shall be paid for the issue of a preliminary reconnaissance permit,<sup>54</sup> and the renewal is "on payment of the specified fee."<sup>55</sup> A fee of 5 Egyptian pounds shall be paid for the issue of a permit in Egypt,<sup>56</sup> whereas in Nigeria the fee is 50 pounds per annum or part thereof. In Spanish Sahara, surface prospecting may be freely undertaken but no exclusive permission is granted.<sup>57</sup> Thus the reconnaissance stage is not regarded as a revenue stage; payments are either not prescribed, or in those laws in which they are provided, they are generally low.

In most of the laws no work obligation is stipulated for a permit holder, but as a general rule, annual reports describing the work done and including maps, well-logs and samples are demanded. Moreover, a detailed information which normally accompanies an application for permit must include a detailed program of work, time for commencement, and annual





expenditure, and this program must be compiled with and not altered in substance without prior authorization of the authorities.

### III. EXPLORATION STAGE

With the exception of the petroleum law of Libya, which has no separate grant of exploration rights, all the petroleum laws studied have much similarity with respect to the rights granted. In all cases concerned, an exploration permit (designated H permit in most of Group 1) conveys to the holder the exclusive right to carry out by any means, including drilling, surface and subsurface investigation over specified areas. The licence or permit assures the holder that he will be permitted to go on to exploitation over part or the whole of the permit area if commercial discoveries are made and if he has complied with the obligations and applicable laws and regulations. Practically all the laws give the holder the right to carry away and dispose of petroleum and petroleum products extracted during exploration and testing, subject, of course, to all discoveries having been reported to the authorities. However, all development work or work of actual exploitation is forbidden unless exploitation rights are applied for and granted. The laws of all the countries permit the holder to surrender part or the whole of the permit area, to assign his





grant provided he obtains prior approval of the authorities, and to a renewal of the permit if the laws, regulations and obligations are complied with. Certain ancillary rights normally encompassed in exploration and exploitation rights will be examined later.<sup>58</sup>

### Illustration

Because of the substantial similarity of relevant provisions in the petroleum laws, one example will suffice:

#### Cameroon

11(a). An Exploration Permit shall confer within the limits of its perimeter and without limit to depth, the exclusive right to prospect and explore for the substances to which it applies.

(b) The holder of an Exploration Permit shall be entitled:

(1) to renewal of his permit upon demonstration of compliance with the requirements of law and regulation during the previous term:...

(2) to dispose of products extracted at the time of exploration and any trials involved in it, subject to report to the Directorate of Mines and Geology: Provided that any development of exploration into working shall be halted; and

(3) to the grant of a Mining Permit or Concession where he has, during the term of the Exploration Permit and by properly executed works, demonstrated the existence of a workable deposit within the perimeter for which he applied.<sup>59</sup>

As regards the discretionary nature of these grants, it is interesting to note that in some laws (e.g. Mining Codes of Cameroon and Gabon) there are provisions to the effect that





a refusal of an exploration permit does not give right to any indemnity or compensation. Article 11(c) of the Mining Code of Cameroon quoted above states:

The grant of an Exploration Permit shall be at the discretion of the Government, so that refusal wholly or in part shall give no right to compensation.

One effect of such provisions seems to be that compliance with the basic laws and formal requirements would normally give rise to the grant of a permit but it does not ipso facto give an enforceable right to a permit. As between two applicants who have fulfilled the required conditions, discretion may be exercised in favour of the applicant who offers more benefit to the state than is prescribed by law, such as equity participation by the state in production operations and construction of a refinery in the host country.

### Area Limitation

In Group 1, most of the laws have no provisions dealing with area limitation and with the number of permits that may be held by one applicant. In Groups 2 and 3 maximum areas are laid down and they vary from country to country. Ethiopia, with no petroleum law and Libya, with no separate exploration stage, have no provisions on the size of exploration holdings. Some petroleum laws provide for the maximum number of permits allowed to one applicant whereas in others the maximum number





of permits is limited by the provisions on maximum acreage. In the petroleum law of Morocco both limitations are laid down in a form which sets a limit on the number of permits: 500 square kilometers is the minimum area per permit and 20,000 square kilometers and 40,000 square kilometers are the maximum areas on zones 1 and 2 respectively. The figures for a number of countries are shown in Chart 1 of Appendix 1 and it will be seen that the maximum varies from zone to zone under many laws.

The shape of permit areas is prescribed in most petroleum laws in all the groups.

Mandatory Area Reduction. In French-speaking Africa and North African Countries (Group 1, Morocco, Tunisia, Egypt, as well as Spanish Sahara), provisions are made for compulsory reduction of permit areas on the renewal of permits. The fraction of the original permit area which the holder is ultimately allowed to retain and the rate of reduction vary from country to country. Thus in Algeria 37.5 percent of the original area may be retained on and after the second extension of the permit. In Morocco, 37.5 per cent on the third extension, with a maximum area per permit of 5,000 square kilometers, may be retained and if a special further extension of two years is granted, the permit area must be reduced to 25 per cent of its initial area.<sup>60</sup> Where a concession gives both



exploration and exploitation rights as in the Western Desert of the United Arab Republic, Somalia, Tunisia, Libya, reduction of exploration area in successive stages is generally imposed.<sup>61</sup> In the petroleum laws in Group 2, area reduction may be imposed only when a permit holder applies for exploitation rights and not in successive stages during exploration.

The permit holder is normally free to choose the area to retain, but it must be of the shape and compactness prescribed by the petroleum law in question. In Morocco, for example, the areas surrendered must be continuous so far as possible and separated from each other by at least 500 square kilometers.<sup>62</sup>

### Duration

The primary term of exploration rights (or "prospecting" rights as designated in some petroleum laws) and the maximum duration of these rights are laid down in most of the controlling laws. In those cases in which the maximum is not specified, the number of renewals permitted is set out in the granting decree or the contract document. A controlling petroleum law with no fixed maximum exploration period usually gives the authorities the discretion to fix it. Such provisions give room for negotiation on the number of renewals in the circumstances of each particular case. Under the Mining Code (1964) (Cameroon), for example, the primary term of an





Exploration Permit is four years, "renewable for four years at a time for such number of times as may be prescribed by the decree granting it,..."<sup>63</sup>

Even among the petroleum laws based on the Saharan Petroleum Code, there is no uniformity as to the primary terms and number of renewals; they vary from country to country as can be seen from Chart 1 of Appendix 1. In some countries the primary term and the number of renewals permitted vary from zone to zone (Morocco, Spanish Sahara) or according to whether the operations are on land or on the continental shelf areas (Nigeria).

The right of renewals, though given in all cases, is not automatic. It is usually conditional on the fulfilment of work and other obligation of the permit. A holder of more than one permit may set off work done under some of them against work deficiency in others. A few petroleum laws impose more stringent obligations during the renewal period than during the primary term, whereas others provide for renewal on the same conditions as prevail during the primary term.



## Illustrations

### Group 1

#### Gabon

These renewals are granted as a matter of right, at the option of the holder, if the latter has performed a minimum amount of work established by the instrument granting the permit, and has satisfied the obligations under the laws and regulations resulting from his permit during the preceding period.<sup>64</sup>

### Group 3

#### Egypt

Article 26 provides in part as follows:

The licence shall be renewed, at the request of the Licensee ... so long as prospection operations are carried out in a serious manner.<sup>65</sup>

[The same Article provides that renewals after the expiration of the fourth year are possible only if at least one drilling outfit is started in the fourth year and operated continuously. The authorities must be satisfied that the outfit is capable of reaching the producing strata and extracting petroleum "most advantageously". An operator with at least two drilling rigs in each prospecting area can obtain renewal for other areas after the fourth year, but the annual rental is increased substantially from year to year. After eight years the Government may refuse renewal].

#### Somalia

Each extension is granted by decree of the Administrator, after consulting the Commission, and is dependent on the approval of a detailed technical and financial program covering the new period of work.<sup>66</sup>

## Work and Other Obligations

The purpose of provisions relating to work obligations is to ensure that the whole of the permit area is explored as





expeditiously and efficiently as modern technology allows. Work obligations laid down in all the petroleum laws and regulations studied are similar in substance although details vary. This part of the study does not lend itself to comparison based on the groups suggested earlier because of the substantial similarity of provisions in all groups.

All the petroleum laws make provisions for work to be commenced promptly and carried out in a diligent and continuous manner in accordance with good oil field practice. Practically all the laws set down a period of time within which the permit holder must undertake certain operations such as commencement of work and of exploratory drilling. All the laws require, in effect, that a minimum work program specified in the regulations or in the contract document must be carried out within agreed time limits. Standards of diligence are spelled out in some laws: some stipulate minimum annual investment on the permit area (Egypt, Spanish Sahara, Tunisia); some require a specified footage to be drilled before a given deadline (Nigeria); and some demand the employment and training of nationals (Algeria, Nigeria, Somalia). The minimum work obligation is normally based on the work done on the permit area as a whole. As in the case of exploration rights, work obligations may vary from one zone to



another (Spanish Sahara) or from one geographical region of the country to another (Egypt, Nigeria).

Another basic similarity among the laws is the provisions for regular notices, reports and submission of maps, plans and other data. Notice must be given to the authorities before the commencement of boreholes and wells. All discoveries must be reported within the time limit specified in the permit and maps, plans and other data must be submitted to the authorities as required. Provision for keeping and making available to the authorities of samples is made in most laws. All concession contracts for exploration and exploitation carry this obligation whether or not the controlling law has such a provision. The holder is obligated to keep accurate accounts and to permit government officials to inspect his records and operations.

The laws of some countries provide that prior notice must be given of any dealing that may result in the change of ownership, management and control of a company holding petroleum rights (e.g. Algeria).

It is to be pointed out, however, that not all the petroleum laws provide for each and every obligation mentioned above. Some obligations are set out in petroleum regulations (Algeria, Libya, Morocco, Tunisia, Spanish Sahara), or in Government Notices made under the authority





of the controlling law (Nigeria), or in a convention (convention d'establissement) accompanying the grant of exclusive exploration permit (permis exclusif de recherche - Niger, Mali, Senegal and most of Group 1 petroleum laws).

Finally, the exploration right holder is obligated to apply for exploitation rights within a stated time limit from the discovery of commercial deposits.

### Illustrations

Three examples will illustrate the general trend:

#### Group 1

##### Algeria

Article 19. The decree establishing a permit may set a period of time within which the holders of said permit must undertake certain operations, in particular exploratory drilling.

It may also for the first period of validity contemplated set minimum cumulative expenditures which must be reached by the end of each year.

Article 20. Permit holders...are under obligation to use for the delimitation and placing under production of the deposit the accepted methods and procedures for the use of such methods which are most suitable to avoid losses in energy and industrial products, assure the preservation of the deposits and increase to the utmost the economic yield in liquid and gaseous hydrocarbons.<sup>67</sup>

Article 21 goes on to list the notices that the permit holder must give to the authorities.



## Group 2

Nigeria

Obligations. 2. The Licensee shall:

- (i) with all reasonable despatch commence and continue to explore the area by geological or geophysical methods;
- (ii) within six months of the date of the grant of the licence begin geophysical investigations which shall continue until drilling operations are begun or the licence terminates;
- (iii) before the end of the third year have drilled a minimum of 12,000 feet;
- (iv) not later than the third year have started a training scheme for the technical training of Nigerian staff.<sup>68</sup>

The obligation under 2(iii) above applies to land and territorial water areas. On the continental shelf areas it applies before the end of the fourth year.<sup>69</sup>

## Group 3

Morocco

Article 16. The holder of an exploration permit must:

- a) Commence the carrying out of the work program within a period of six months in the case of Zone I and within a period of nine months in the case of Zones II and III, this period commencing with the notification of the decree granting the permit;
- b) Carry out the work program in accordance with rates stipulated for the said program;
- c) Advise the Minister in Charge of Mines in writing of any information of an economic or technical nature relating to the continuation and results of any kind of his exploration work which may be requested of him;
- d) Retain the core samples extracted as well as all indices of interest to the exploration for mining products.<sup>70</sup>





## CHAPTER IV

### EXPLOITATION STAGE

To begin this chapter, a general survey will be made of the systems of granting exploitation permits. The rights and obligations attached to these exploitation permits will be dealt with in two subsequent chapters. The petroleum laws of some countries make provisions for the grant of concessions which embrace both exploration and exploitation rights and, in some cases, the right, or rather, the obligation to refine petroleum in the host country. Provisions giving the power to grant such concessions will also be discussed.

#### I. SYSTEMS OF GRANT

Under modern petroleum laws in Africa, exploitation of petroleum resources may be undertaken only by the authority of the state in the form of a concession, an exploitation permit, or an oil mining lease. Exploitation permits may be non-renewable and temporary for the purpose of enabling the permit holder to carry out development work pending the grant of a concession (most of Group 1), or they may give full rights of exploitation for short renewable terms (Gabon, Cameroon, Tunisia). Taking the legislation of all the countries as a whole, exploitation rights may be acquired



under one of four systems:

1. Grant of exploitation rights to an exploration right holder over the whole or part of the area covered by his permit or licence;
2. Direct grant of exploitation rights in areas not previously covered by exploration rights;
3. Direct grant of exploitation rights through government sales; and
4. Direct grant of exploitation rights as a result of transfer or assignment from another person of
  - (a) his right to a concession as an exploration right holder; or
  - (b) his concession rights.

A brief discussion of the categories will show that no one petroleum legislation embodies all four categories.

#### 1. Grant of Exploitation Rights to Exploration Right Holder

In the first category, the holder of an exploration right who has complied with his permit obligations is given the right to a grant of exploitation rights during the validity of his permit, over a prescribed fraction (usually 50 per cent) of the permit area (Group 1, Egypt, Spanish Sahara, Somalia) or subject to a prescribed maximum area.<sup>71</sup> (Angola, Morocco, Tunisia, Nigeria, Sierra Leone). The right is





specifically given in all the laws and granting documents with the result that, during the life of an exploration permit or licence, only its holder can obtain exploitation rights in his permit area or in those portions of it which he is entitled to select and convert into a concession or oil mining lease.

Only the laws of French-speaking countries in Group 1 make provisions for a grant, by decree, of a "Provisional Exploitation Authorization" during the life of an exclusive exploration permit. The permit is granted only to the holder of an exclusive permit and is valid for a short period of normally two years. It gives the right to exploit producing wells while the holder is under obligation to delimit and develop the deposit.<sup>72</sup> The law gives him the right to an exploitation concession on his satisfying the requirements. However, as soon as the deposit is established to be commercial, he may be called upon to apply for a concession and if he fails to comply with the order, the permit and authorization may be cancelled.<sup>73</sup>

To summarize, in Category I, exploitation rights may be granted to the holder of an exclusive exploration right under the petroleum laws being studied except The Petroleum Law, 1955, of Libya which provides only for grants of concessions covering exploration and exploitation. In addition,





under the laws of French-speaking Africa, exploitation rights may be granted to a holder of a temporary exploitation authorization as well as to the holder of exclusive exploration rights. In nearly all cases, the exploitation rights cover only part of the original exploration area.

Under some laws (e.g. of Algeria, Somalia, Tunisia) if a discoverer of a deposit does not obtain the concession for such discovery, he is entitled to an indemnity from the person to whom the concession is granted.<sup>74</sup>

## Illustrations

### Group 1

#### Algeria

Article 23. During the term of validity of an H permit, only its holder may obtain a concession within the perimeter of such permit.

He shall be entitled, if he has made application in the appropriate manner prior to expiration of the permit, to the gaseous hydrocarbon deposits discovered within the permit area during the validity thereof...<sup>75</sup>

Article 18. Liquid or gaseous hydrocarbon deposits may be exploited in the area of the Organization Commune des Régions Sahariennes only pursuant to:

- a concession; or
- a temporary exploitation authorization granted in accordance with Article 19 below:

Article 19. During the term of validity of an H permit, its holder may, on his application, be authorized by decree ... to exploit the producing wells for a maximum period of two years during which he shall be required to continue the delimitation of the deposit, in accordance with the provisions of Article 7 of this Statute.<sup>76</sup>





Gabon

Article 28. The holder of a mine exploration permit or of an exploitation permit may alone obtain, during the term of validity of his permit, a concession covering, within the perimeter of said permit, the substances covered by the latter.

The holder of an exploration permit or of an exploitation permit has the right to obtain concessions for the same substance if, during the term of validity of his permit he has submitted proof of the existence within the said permit of an exploitable deposit of said substances and files an application for concession....<sup>77</sup>

## Group 2

Nigeria

## C Oil Prospecting Licence

Rights. 1. This licence gives the holder the exclusive right:

(iii) to the grant of an Oil Mining Lease over the whole area of the licence if on land situated South of latitude 7 degrees North, and to one-half of the area if on land North of latitude 7 degrees North or on the Continental Shelf of Nigeria.<sup>78</sup>

## Group 3

Egypt

Article 30. No Mining Lease shall be issued for a raw combustible in any area unless it has been preceded by a prospecting licence in respect of that combustible in such area.<sup>79</sup>

Article 31. The holder of a prospecting licence shall be entitled to obtain one or more mining leases for part or parts of the prospecting area,...<sup>80</sup>



## 2. Direct Grant over Areas not Covered by Exploration Permit

The second category is the system adopted in Libya and Tunisia. Under this system, which is by no means uncommon in other countries, one and the same granting instrument confers on the concessionaire the right to explore, produce, transport and refine, among other rights. It is not necessary that the applicant should be a holder of an exploration permit over the area applied for or that the area in question should have been covered by an exploration permit.

These grants may be exclusively in accordance with the controlling petroleum legislation (Libya, Liberia), or in derogation of certain provisions of the controlling law (Angola, Egypt, Algeria, Tunisia). In the latter case they are either authorized by the controlling law or by special legislation. Concessions incorporating terms which are either not laid down in the controlling petroleum laws, or in exemption from some provisions of the controlling law, comprise the so-called special contracts.

One example is the Portuguese Government - Cabinda Gulf Oil Company Concession.<sup>81</sup> It was made under Decree No. 41180 of July 9, 1957, which authorizes the Minister of Portuguese Overseas Territories to make arrangements determining the terms and conditions. Another example is contained in Articles 50 and 51 of Law No. 86 of 1956 (Egypt)





which empowers the Minister of Commerce and Industry to grant concessions for exploration and exploitation without limit to size of area on such terms as he may deem appropriate. The above law authorizes special terms in exemption from some provisions of Law No. 66 of 1953. These terms now apply to concessions in the Western Desert of Egypt. In Tunisia, the basic controlling law is the Decree of January 1, 1953 on Mines but

it is believed that each petroleum concession granted and presently in effect has been the subject of a special legislative enactment approving it; the effect of this would seem to be to make each concession contract a special law, controlling over the general legislation as to the subject of such special law. Each concession contract varies in some respect from the general legislation and, under the circumstances, such variations are thought to be valid.<sup>82</sup>

Sections 4 and 5 of The Mineral Oils Ordinance (as amended) of Nigeria gives the Minister of Mines and Power the authority to grant licences and oil mining leases respectively on such terms and conditions as he may deem fit, subject to the provisions relating to payment of compensation for disturbance of surface rights.<sup>83</sup> The regulations for petroleum operations are Government Notice No. 2675, as modified by Government Notice No. 578 (1960), and the model Oil Prospecting Licence and Oil Mining Lease forms, the terms of which conform to the said notices. However, it is clear that the contents of the





notices and forms do not exhaust the discretion given to the Minister under the sections. For example, there is power under the Ordinance for the Minister to enter into exploitation contracts that have government participation as one of the terms. The option of 30 per cent government participation granted in the AGIP's Prospecting Licence in Nigeria will be mentioned later.

It is to be emphasized that the special contracts granted in derogation from some provisions of the controlling law or not fully provided for in the controlling law must be ratified and published as special legislation or decree in most countries before they take effect.

Certain trends, absent from the petroleum laws of the Province of Alberta and of the United States, are apparent in these special contracts granting petroleum rights.

The most noteworthy are:

- (a) joint venture in petroleum operations between a foreign oil company and the host state; and
- (b) the direct linking of oil and gas concessions with the industrialization of the country in such a way as to integrate the petroleum industry into national economic planning and development.

One important factor that has influenced the adoption





of petroleum joint ventures in Africa has been the success of the state-owned oil companies, the Italian Ente Nazionale Idrocarbon (ENI) and the National Iranian Oil Company (NIOC). The origin and growth of the two companies have been described by many writers; only brief references will be made to their history.<sup>84</sup> Led by the late Enrico Mattei, and operating through its subsidiaries, ENI had something new and attractive to offer to developing countries with large oil resources, particularly in the Middle East and Africa. As one Middle East writer states:

By joint venture formula which it advocated and championed in the external market, ENI demonstrated how national oil companies can receive technical help and risk capital from foreign oil companies at minimal loss of income and at no risk whatsoever.<sup>85</sup>

African and Middle East countries saw in the joint venture plan an opportunity to achieve a favorable balance between foreign exploitation and national economic sovereignty over natural resources. In the words of the same author:

The ENI formula attracted developing countries which found in it a new socio-economic change more than a purely business deal based on financial considerations, as has been the arrangement with major international oil companies.<sup>86</sup>

NIOC is the agency through which the Iranian state engages in petroleum operations. Formed after the Mossadegh regime nationalized the properties of the Anglo-Iranian Oil



Company on March 20, 1951, NIOC is a party to the International Consortium agreement which ended the nationalization dispute on October 25, 1954. Under the agreement, the Consortium, consisting of 54 per cent British-Dutch interests, 40 per cent American interests, and 6 per cent French interests, is the operator on behalf of the Iranian State for exploration and production; while NIOC assumes responsibility for non-operating activities in the concession area such as health, welfare and social services. NIOC engages in petroleum operations in other areas on its own and in partnership with foreign companies, including ENI and Pan American which are not members of the Consortium, but NIOC must hold not less than 30 per cent of the ownership interest in mixed organizations or joint ventures.<sup>87</sup>

The idea of petroleum joint ventures was adopted in parts of Africa. In most countries state participation is in the form of stock participation in a company largely owned and controlled by foreigners, whereas in one or two countries (e.g. Egypt) it is enforced joint venture with government owned corporation. Egypt, a prominent member of the Arab League, was the first to put joint venture into practice. She pioneered the system of granting oil leases on much smaller acreages for much shorter terms to many





enterprises from many nations in contrast to the large acreages and long terms granted to few oil companies in the Middle East. Exploration and exploitation rights were granted to mixed or predominantly Egyptian enterprises. In 1957 the Egyptian General Petroleum Corporation (EGPC), a state-owned agency, and the Egyptian Cooperative Petroleum Company, a national company, entered into a joint venture contract with the International Egyptian Oil Company (IEOC), a subsidiary of ENI, for the exploration and exploitation of petroleum resources. Since then, EGPC has concluded agreements with ENI and other international oil companies; one agreement was concluded with The Phillips Petroleum Company (Bartlesville Oklahoma) in September, 1963, and two with Pan American UAR Company on October 23, 1963, and in February, 1964.<sup>88</sup>

The Franco-Algerian Oil Agreement dated July 29th, 1965, which in some respects creates a precedent, illustrates the two trends mentioned above.<sup>89</sup> The treaty runs to six titles (chapters) and several annexes, and covers topics like "cooperative association", oil fiscal measures, training of Algerian nationals and French aid for Algeria's industrialization. The last topic, French aid, is linked with the development of petroleum resources and other industrial projects in Algeria. In Article 31 of the treaty is contained





the following provision:

For the purpose of carrying out specific industrial programs, the French Government agrees that it shall grant to Algeria:

- financial assistance in the form of long-term loans;
- supply credit guarantees;
- the technical assistance necessary for building and operating appropriate industrial units and for training the personnel employed therein;
- access to the French market of Algerian products, under the most favorable terms, and including, if necessary, technical assistance in the field of marketing.

Under this agreement, Algerian and French companies - both state-owned - will cooperate in the joint exploration and exploitation in an area of 70,000 square miles for an initial period of 25 years. The French company will finance 60 per cent of Algeria's exploration costs. France undertakes to provide aid for Algeria for 5 years at the rate of 200 million francs per annum "consisting of 160 million francs in loan and 40 million in grants,"<sup>90</sup> the loan is to be paid back in 20 years at 3 per cent interest. Also, French companies are given a privileged position in the exploitation of oil and gas in Algerian Sahara, and Algeria will not only directly participate in the exploitation but also will gain higher taxes and royalties.

The wide acceptance of joint ventures with participation in a narrower way is evidenced by other examples in Africa. The Hydrocarbon Law of Morocco allows for it under





its provisions for bidding for concessions. In fact, a number of alien companies, including AGIP Mineraria (1958), a subsidiary of ENI, and the French Bureau de Recherches de Petrole (BRP), are operating under the joint venture system. ENI's prospecting licence in Nigeria gives an option to the Nigerian Government to take 30 per cent in the venture if a commercial discovery is made.<sup>91</sup> The discovery recently made in the area of El Borma in Tunisia is by the Societe Italo-Tunienne D'Exploitation Petroliere (SITEP), a 50-50 partnership between ENI and the Tunisian Government.<sup>92</sup> Oil producing countries, and many with as yet no discoveries, have entered into agreements with foreign oil companies for the construction and operation of oil refineries to be owned in partnership. One partnership includes Gabon, Central African Republic (Brazzaville) and Chad, jointly owning 25 per cent, on the one hand, and BRP owning 75 per cent, on the other.<sup>93</sup> Other partnerships have been entered into in Nigeria, Dahomey, Libya, Algeria, U.A.R., Tunisia, Ivory Coast, Guinea and Madagascar.

Another illustration of the second trend is found in the unique approach adopted in Libya by the Ministry of Petroleum Affairs in inviting bids for concessions on Libya's onshore areas in 1965. Forty-one concessions were granted in February, 1966, and the last in July, 1966.<sup>94</sup> A list of 14





"Preference Factors" was advertised, and each factor embodied some benefit to Libya. If one or more of the factors are offered in bids, they will carry additional influence with the government in considering the application of the bidder. These factors include a higher share of profits to the government, commitment to build refineries, petrochemical plants and other facilities. The offers made go beyond normal petroleum operations. They include up to 52.5 per cent of profits to the Libyan Government, fringe benefits such as scholarships, loans to the government, housing programs, building of schools, hospitals and agricultural development projects. Also offered were free participation in the percentage of 25, prediscovery expenses paid by the company except 25 per cent of the cost of the discovery well. American Mining and Exploration, a Philadelphia independent, made an offer of 15 per cent royalty plus 52 per cent of profit in addition to building and presenting to the government an escalated series of projects such as schools, hospital and a refinery to be transferred to the government over a 20 year period at 5 per cent interest.

The "Preference Factors" presumably come within the meaning of "furtherance of public interest" in Article 5(a) of the Petroleum Law, 1955 which lays down the conditions to





be considered in deciding the eligibility of applicants for permits and concessions. One of the conditions is "the furtherance of public interest".

The point to be made, therefore, is that many African nations and foreign companies have worked out petroleum joint ventures mutually acceptable to the parties. Most of them are made in accordance with either the basic controlling petroleum laws or special laws deriving authority from the controlling law. The extent of state participation varies from one country to another, but generally speaking, few agreements give the state an effective control of the enterprise. Other terms of the agreements vary considerably, but it is possible to identify the features which characterize most petroleum joint-venture agreements. Basically, they are:

- (1) A concession is granted jointly to an alien company and a state oil corporation, usually semi-autonomous;
- (2) The concession gives exploration and exploitation rights over extensive areas;
- (3) Exploration is financed by the alien company which also supplies all the know-how and bears the risk of exploration;
- (4) If commercial discoveries are made, the joint venture comes into being and state-owned corporation





participates (equally) in the development and production through a joint company to be financed (equally) by both companies. The new company is designated as the operator and operates as an agent of the parent companies. Alternatively, the joint venture is formed as a separate juridical entity;

- (5) Exploration costs are to be refunded to the foreign company according to an agreed formula if commercial production is obtained.

The Phillips' and the Pan American's concessions in Egypt are of this pattern. A similar pattern is adopted in Algeria, Morocco and Tunisia.

The terms of some agreements may be such that state participation is indirect. No new company is formed to undertake development and production and the state participates in the concessionaire's working interest through stock participation if commercial discoveries are made. Apart from the rights of the state as the legislator and grantor, its rights in the company are limited to those of a minority shareholder.

As stated earlier, special contracts are exempted from some provisions of the general petroleum law, but except for such provisions that do not govern special contracts, the contracts are made in accordance with the general petroleum





law in most countries. Thus, unless specifically excluded or modified, such matters as relinquishment of exploration blocks, work program and obligation, rights of surrender and renewal, obligations regarding employment of nationals, construction and operation of refineries in the host country, and payment of royalties, rents and taxes are embodied in the contract in accordance with the provisions of the general petroleum law. In a few countries, however, (Angola, Mozambique, Ethiopia) special conditions are set up for each case and negotiated for on a more or less ad hoc basis.

Comment. Political independence, to be secure, must be buttressed by economic independence. Therefore, an overriding aspiration of governments in Africa is to exercise sovereignty over natural resources. With respect to petroleum, the means of achieving this aspiration lies in state participation in producing and refining operations. Participation is seen by the states to offer more scope than the conventional concession for generating domestic capital, providing technical and managerial skills and for fringe benefits. Thus the terms and conditions for granting petroleum rights give priority to raising domestic capital and to training the nationals of the host country to supply the manpower needs of all levels of the industry.





Participation may have some advantages. The advantages to the state will be considered first:

Financial benefits. In theory, under petroleum joint-venture agreements, the state earns additional financial benefits as a working interest owner. The ENI-UAR concession may be cited as an example. Because the government-controlled companies are half owner of the operating company (COPE), 75 per cent of the net profits will, in theory, accrue to national interests; that is, 50 per cent of the net profit in the state's capacity as lessor plus 50 per cent of half the net profit as an equal partner. The current percentage share of profits is 80-20 in favor of the Government's EGPC. Thus in this and similar cases, state participation offers a better opportunity than the conventional concessions for solving the problems of inadequate local capital.

It may be remarked that, firstly, there is no economic imperative why equal or even greater revenues cannot be generated by royalties and taxation under conventional concessions, but it may be that joint venture arrangements offer a more palatable means for increasing revenues than simply to increase tax rates or royalties. It seems that the advantage of joint ventures is that it is easier to achieve the same result under it than under the conventional concessions because





to increase tax rates and royalties may result in a failure to attract sufficient foreign capital and technical and managerial skills. Secondly, as in all business ventures, there is the possibility, however remote, that the joint venture in development, producing and refining operations may prove to be a financial failure, in which case, the state will be financially worse off under participation than under the conventional system in which the state risks no capital. Thirdly, even if the joint venture is no financial failure,

[w]here the profit-margin from the participation of a particular resource is very high, it may not, in the long run, be to a country's advantage to have that resource exploited if the net earnings and capital appreciation are ultimately to be taken out of the country. Once a substantial local participation is assured, the more much needed domestic capital will be obtained.<sup>95</sup>

Lastly, it is to be borne in mind that by virtue of their specialization and experience, many international oil companies operating in Africa are better placed than some young African countries to make an accurate financial evaluation of the terms and conditions offered in petroleum joint venture agreements, especially in the areas of fringe benefits. The state may discover later on that its financial benefits under the agreements are much less than it originally estimated.





Fringe benefits. Linking petroleum exploitation with national economic development is likely to lead to a host of fringe benefits such as loans, welfare facilities and accelerated training of nationals. Many of the fringe benefits are not laid down in the controlling petroleum laws and are not normally prescribed in conventional concessions. If the nationals participate directly in all levels of petroleum operations as they do in some joint venture, and training schemes are implemented, the problem of the dependence of the state on foreign technicians and managerial staff is alleviated at a faster pace than under the conventional concession system.

As regards social and welfare benefits, it may well be that the company with the capital and technical skill will provide the facilities better and quicker than the government itself.

In spite of the benefits, the direct involvement of the oil company in social development may have its drawback. Some of the fringe benefits such as the building of schools, hospitals, agricultural projects and housing schemes have the inevitable effect of government dependence on the industry for social and welfare facilities. There is passed over to industry a duty and influence that properly belongs to the





government. It is illusory to talk of national sovereignty when the government is positively expanding the influence of the foreign entrepreneur in the development projects of the country. This situation may soon or late result in the implementation of unpleasant measures like expropriation or nationalization of the foreign enterprise. The view may be taken, however, that it is in the national interest to involve the foreign oil company in the spheres of social development; the facilities may not be provided within a foreseeable future if the company does not.

Perhaps one objection to the demand for fringe benefits generally is that of uncertainty. The provision of welfare facilities by the oil company is usually on the condition that production reaches a certain level, which in itself, is a contingency that may or may not happen. One is not sure whether to exclude or to include such facilities in national development plans. The offers made by the American Mining and Exploration Company for a concession granted in Libya in 1966 may be cited as an example. The Company offered to construct a 50,000 b/d refinery when production reaches 500,000 b/d; to provide 100,000 Libyan pounds for housing, 150,000 Libyan pounds for the construction of an elementary schools, 150,000 Libyan pounds for the construction of a secondary school and





500,000 Libyan pounds for the construction of a hospital when production reaches various levels up to 400,000 b/d; to build roads and construct oil tankers when production reaches 500,000 b/d. The offers are undoubtedly very attractive but one wonders how many of them will come to fruition since they are conditional on production reaching certain figures.

Satisfaction of Nationalistic Aspirations. One important, though intangible, advantage which state participation has over the conventional concession is that of satisfaction of nationalistic sentiments. To nationalistic sentiments, state participation in petroleum operations is more acceptable than operations by foreigners alone and nationalists tend to regard participation as economic cooperation rather than foreign exploitation. As discussed below, the element of satisfaction of nationalistic aspirations is important from the concessionaire's point of view.

Control of the Industry. As regards the efforts to exercise sovereignty over natural resources, it is necessary to enquire whether the measures adopted in joint venture agreements are capable of giving the country an effective control of the company. For this purpose, a distinction may be drawn between partnerships in which the state has a controlling participation or is an equal partner, and those in





which the state is an unequal partner. The joint venture contracts in Egypt and Algeria, designed to achieve controlling participation of the operating company, belong to the former category. The governments have effective control on the ownership, policy-making and management of the joint ventures by virtue of owning fifty per cent or more interests in the companies and being adequately represented in the policy-making and management organs of the companies. There is much possibility of a national orientation in the policy decisions of the company. Participation of this kind may be said to be direct and the state participates in the day-to-day operations as compared to those cases in which the state is a junior partner and participates only financially. In the second type of participation, the state is an unequal partner as regards ownership, policy making and management of the operating company. Control is indirect in the sense that it is not from within the company and is limited to the legislative powers of the state unless additional measures of control are provided in the partnership agreement. The exercise of control or sovereignty in the second type of participation is bound to be limited in scope and operation. Without nationalization, which may be disastrous, and with the state owning less than a 50 per cent interest in the company, it is difficult to see





how a state with little or no domestic capital and know-how can have an effective voice in the control of the business of petroleum exploitation.

Contact. In relation to both parties, petroleum joint venture provides a close and continuous contact and consultation between the petroleum right holder and the host government. Such a degree of identity of interest and function is lacking in separate petroleum ventures. No matter how excellent the drafting of a concession contract is, it requires the goodwill of the parties to implement its terms. Therefore, petroleum joint venture has an advantage over conventional concessions as regards contact, mutuality of interest and cooperation between the government authorities and the foreign oil company.

On the part of the foreign company, there may be some advantages in state or national participation. Petroleum exploitation is a factor of considerable political importance particularly where the concessionaire is owned and controlled by foreigners. Because joint venture appeals to nationalistic sentiment, it is more secure against expropriation or nationalization. Large oil companies understand this relationship and therefore are anxious to have government as partners. In fact,





at the Anglo-Nigerian Trade Discussion in London in July, 1965, British investors insisted on Nigerian Government participation even in projects where private enterprise was prepared to take the risk.<sup>96</sup> Possibly, this anxiety is a reason why those companies may offer better financial returns under joint ventures than under direct grants of exploration rights.

Petroleum joint ventures provide a measure of security for the foreign company's tenure and capital in some other way. Since the joint venture agreements are usually ratified by the national legislature, they receive legislative guarantee and protection as special laws. The terms of the agreements prevail over provisions of the petroleum laws of general application and of the general laws which may conflict with the terms. In addition, because of the partnership, the foreign company is in a privileged position in certain matters over other companies with no national participation: Lower royalty rates (Egypt); transfer of all or a greater percentage of profits (Morocco) regardless of foreign exchange control regulations; exemption from surtax (Morocco) and surface tax; guarantee of a specified percentage of net profit (Egypt). In the UAR- Pan American and the UAR- Phillips concessions, 25 per cent of net profit, free of all present and future taxes, is guaranteed by the government.





In conclusion, as a means of achieving economic independence to support political independence, governments in Africa are insisting on higher prices to be paid for the exploitation of their oil resources and on a number of other benefits. As a result of increased social consciousness and economic awareness, new patterns, in the form of economic co-operation, are being set. At the same time, measures are being taken to encourage the foreign investor to invest in the business of petroleum exploitation, to see that his investment is secure and that the terms and condition for granting petroleum rights are such that he will make reasonable profit. It is left to be seen whether the pattern of cooperation that is noticeable in joint ventures will provide the balance between foreign exploitation and national interest.

### 3. Grants Through Government Sales

In most of the petroleum laws in Group 1 and some in Group 3 (Egypt, Spanish Sahara and Libya) provisions are made for direct grant of exploitation rights through government sales of exploitation blocks that have reverted to the state as a result of abandonment, withdrawal, cancellation, surrender, expiration or termination of exploration and exploitation areas. The method of sale is by competitive bidding. Regulations are made in all cases for the conduct of the





sales in order to guarantee fairness to all the applicants. Under some of the laws, if there is parity of offers, the owner of the exploitation rights in neighbouring areas or the petroleum right holder who was obligated by the laws to relinquish the blocks, is given priority in obtaining the exploitation rights. Other criteria are also laid down for determining priority of offers and they include time of filing application, ownership of neighbouring leases and in Egypt, whether or not the applicant is an Egyptian national. Only the petroleum laws of North Africa countries have provisions on the procedure to be followed in the conduct of government sales of blocks for exploitation.

### Illustrations

#### Algeria

Article 39. After the decision withdrawing a concession has become final, the concession shall be put up for public bidding pursuant to administrative methods.<sup>97</sup>

#### Gabon

Article 31 [in part]

In case the forfeiture of the rights of a concessionaire, the concession shall be sold at public auction. If no bidder appears, the concession shall be cancelled.<sup>98</sup>

#### Egypt

Article 33. The auction for exploitation areas shall be made in conformity with the conditions laid down for mining leases with the exception of royalty which



rates given in Article 31 shall constitute the bidding minimum in the auction.<sup>99</sup> [i.e. 25%]

The same article gives the Minister of Commerce and Industry the power to form a committee to advise him on lower bidding minimum royalty if the existence of crude oil does not justify higher royalty. The

Article continues:

If the area covered by the auction is contiguous to an exploitation area, priority in obtaining a mining lease shall, in case of parity of offers, be given to the neighbouring lessee.

Similar provisions for public auction of exploitation areas are lacking in the laws in Group 2, Somalia and Angola. It would seem that direct exploitation rights may be granted in the ordinary course in certain circumstances through sealed bidding. Grants may be made over areas that have reverted to the state on terms more favorable to the state than those laid down in the basic controlling law.

#### 4. Grants by Virtue of Transfer or Assignment

All the petroleum laws give the exploration and exploitation right holder the right to assign or transfer his rights, subject to the approval of the authorities. The laws of French-speaking countries specifically give to the holder of an H permit the right to assign his right to a concession.





## Illustration

### Algeria

Article 34. The right to a concession may be transferred by the holder of an H permit to a commercial company or to a group of commercial companies under the conditions fixed for the assignment of concession.

If an H permit is held by several persons, each of them may transfer his right to the concession under the condition set forth in the present article, with the consent of other holders of the permit.<sup>100</sup>

The condition is that the assignee(s) must submit an application for a concession together with an application for an authorization of the assignment and also must satisfy the conditions for a grant of concession fixed by the model convention (agreement). Article 35 authorizes the assignment of concessions subject to authorization by a decree.

## II. ELIGIBILITY OF APPLICANT

The basic qualifications required from an applicant for exploitation rights in relation to nationality, domicile, residence, incorporation and financial and technical ability are the same as those for the grant of exploration rights. In addition, an applicant who is an exploration right holder in respect of the area applied for must submit, along with his application, proof of such discovery as to warrant commercial exploitation. He must, of course, have discharged





the obligations imposed under his permit. As shown in Chart II of Appendix 1, a host of other information should accompany every application; the commonest are maps of the area on a prescribed scale, work and investment program, details of the management, capital, directors, share holders with more than a certain percentage (usually one) of the capital stock, and the resident attorney of the applicant company.

As a general rule, where the area applied for is covered by an exploration permit, most of the petroleum laws provide that the applicant must be the holder of the permit (Group 1, Egypt, Nigeria). Some petroleum laws provide simply that the permit holder is preferred to other applicants (e.g. Somalia). However, in a direct grant of exploitation rights the applicant need not be the permit holder of the area in respect of which the application is made. In all cases, the shape and compactness of the area must be that prescribed by the law.

As in the grant of exploration rights, the grant of exploitation rights is discretionary on the part of the government. In some countries (Algeria, Libya, Morocco, Tunisia) the procedure for inviting, receiving and considering applications is laid down in detail in petroleum laws or in their regulations. In others, there is no legislative enactment





detailing the procedure for considering applications although in most cases, notices inviting applications are published in official gazettes and anyone who wishes to oppose an application may do so. The laws and regulations with detailed procedure typically deal with such matters as the content of the official notice for inviting applications, rules for determining the priority of applications and (in Algeria, Morocco, Tunisia) the conduct of public hearings concerning applications.

Under some laws there is a system of "double checking" before an application is granted or rejected. For instance, under the Petroleum Law, 1955 (Libya), decisions of the Supreme Petroleum Council in respect of grant, assignment, renewal, relinquishment or revocation of a permit or concession must be submitted to the Minister of Petroleum Affairs for approval or rejection.<sup>101</sup> Furthermore, the Council of Ministers must approve any decision on the above matters for it to be final. In sum, in Libya, concessions are granted by the Ministry on the advice of the Council, subject to the approval of the Council of Ministers.

It will be recalled that under the laws of many countries, the applicant who includes in his bid an offer for additional benefits over and above the minimum laid down in the law is given preference in the grant of exploitation rights, other things being equal.





Except in so far as he has already complied with the requirements mentioned above, an applicant who relies on a purchase or assignment of a concession or of the right to a concession, must comply with the requirements as well as submit documents to prove his purchase or assignment.<sup>102</sup> There are other requirements which, though not typical, are demanded by some laws. They are important in the countries concerned.

### Libya

Before the grant of a concession the [authorities] may require the applicant to abstain from all political activity in Libya.<sup>103</sup>

This is in the form of an undertaking to be given by the applicant. Also required is

...a guarantee by way of bond or banker's guarantee in a sufficient sum not exceeding fifty thousand Libyan pounds (£E50,000) to secure the due performance of his obligations under all concessions held by him in Libya.<sup>104</sup>

### Nigeria

an undertaking that applicant will supply reports, maps, well-logs, samples to the Government.<sup>105</sup>

A guarantee by way of payment or banker's guarantee is demanded in Spanish Sahara for the same purpose as in Libya.

## III. AREA

Some petroleum laws prescribe the shape and maximum area permitted for holding by any one person at one and the





same time. Maxima are prescribed for particular zones (Libya, Morocco, Spanish Sahara) or within the country as a whole (Angola, Gabon) or both (Libya). In some countries (Egypt, Libya, Morocco) the laws provide for the grant of exploitation rights over areas larger than the permitted maxima in certain circumstances, such as where the applicant offers extra benefits to the state. Thus, areas granted under special contracts are generally more than the maxima laid down in the basic controlling laws (Angola, Gabon, Egypt, Libya, Morocco).

Under some of the laws, a limitation on holdings is achieved not by specific provisions on maximum permissible areas but by the system of area relinquishment during exploration period (Algeria, Egypt) or by provisions which give the exploration right holder the right to concession over only a fraction of the permit area (Egypt, Nigeria if on land North of latitude 7 degrees North, or on the continental shelf).

Provision is made in some laws to prohibit an operator from exceeding the permissible holding by indirect holdings such as through subsidiaries or affiliates (Morocco, Spanish Sahara). The laws of Nigeria, Sierra Leone, and Somalia, for example, leave the size of the area to the discretion of the appropriate government authorities.





## Illustrations

### Egypt

Article 31. The holder of a prospecting licence shall be entitled to obtain one or more mining leases for part or parts of the prospecting area, the total surface of which shall not exceed half of the said areas, subject to the following conditions:

- 1) That each part shall be in the form of a rectangle, the sides of which are parallel to those of the prospecting area and are not less than 500 metres long each, unless the Fuels Department decides that the area shall be in another shape or size depending on the nature of the land.<sup>106</sup>

### Libya

Article 9.

- 7) The boundaries of every concession granted hereunder shall conform as far as possible to the grid lines of the official map of the [Ministry of Petroleum Affairs].

- 8) The maximum number of concessions and the total areas which may be held at one time by any person are as follows:

- (a) three concessions in each of the First and Second Zones and four concessions in each of the Third and Fourth Zones provided that:

- (i) the [Authorities] may grant concessions in excess of the maximum number permitted hereunder and shall give reasonable consideration to applications submitted for that purpose:

- (ii) no concession in which there is an oil and gas well shall be included in computing the number of concessions held by a concession holder;

- (b) 30,000 square kilometres in each of the First and Second Zones and 80,000 square kilometres in each of the Third and Fourth Zones.<sup>107</sup>

### Morocco

Article 26. One and the same person may not either directly or indirectly hold exploitation rights covering an area of more than 3,000 square kilometres in





Zones I and III and 5,000 square kilometres in Zone II.

In the event that one and the same person should either directly or indirectly hold exploitation rights covering areas greater than those indicated above, formal demand shall be served upon him to proceed with the reduction of these areas; if this formal demand is not acted on within the period of one month, the areas will be reduced to the limits indicated above ex officio by decree of the Minister in Charge of Mines.<sup>108</sup>

### Nigeria

Area. 3. The area of a mining lease may be of any size approved by the Government.<sup>109</sup>

Shape. 5. The shape of the lease must be bounded by sides either North-South, East-West, Northeast-Southwest or Northwest-Southeast in direction with a width not less than one mile.<sup>110</sup>

### Mandatory Area Reduction

The mandatory area reduction which exploration rights holders are obliged to make has been discussed on page 43. Where exploration and exploitation rights are granted in one concession, the concessionaire is normally obligated to relinquish part of the concession area according to a prescribed formula. Concessions in Libya and the Western Desert of the United Arab Republic are typical examples of concessions governed by mandatory area reduction provisions.





## Illustrations

### Libya

Within a period of five years from the date of a concession, the concession holder shall reduce the concession area to 75% of its original size; within eight years from the said date, the concession holder shall further reduce the concession area to 50% of its original size and within ten years from the said date the concession holder shall further reduce the concession area to 33-1/3% of its original size in the case of areas located in the First and Second Zones and to 25% of its original size in the case of areas located in the Third and Fourth Zones.<sup>111</sup>

Law No. 66 of 1953 on Mines and Quarries (Egypt) gives the prospecting licence holder the right to exploitation over half of the licence area. As regards the remaining half, he is given the right to one or more leases at a royalty rate of 25 per cent instead of the 15 per cent rate on the retained half, for the period of the primary term.<sup>112</sup>

## IV. DURATION

Typically, the permitted period for exploitation is always longer than that for exploration and is a fixed primary term with a number of renewals. However, the petroleum laws for Algerian Sahara and most petroleum laws based on the Algerian Sahara Code provide for a duration of 50 years with no extension; that is, Group 1, with the exception of the Mining Codes of Gabon and Cameroon. The Mining Code of





Gabon<sup>113</sup> provides for a primary term of 75 years with one or more renewals of 25 years each and that of Cameroon, "for a renewable term of twenty-five years"<sup>114</sup> for exploitation concessions. The primary terms and the maximum duration, in practically all cases, are longer than those of modern oil and gas leases in Canada and public domains of the United States. In Crown leases in the Province of Alberta the duration of the lease is a primary term of ten years renewable thereafter, as to the producing acreage, for the duration of production.<sup>115</sup> The freehold oil and gas lease in Alberta is for a fixed primary term of from five to ten years, with a thereafter clause extending the lease for the life of production. In the United States, the duration of a public lease issued under the Mineral Leasing Act, 1920, is laid down as follows: "...for a primary term of five years and shall continue so long thereafter as oil or gas is produced in paying quantities."<sup>116</sup>

In Africa the range is from 25 years (Cameroon) to 99 years (Tunisia) for the primary term and from 45 or 50 (Egypt) to an indefinite period (Gabon, Tunisia) for maximum duration. In one concession the rights granted "shall remain in effect thereafter for a term of 50 years, and as long thereafter as either gas or oil products may be produced in paying quantities."<sup>117</sup>





TABLE 7 DURATION OF EXPLOITATION RIGHTS

Country	Maximum Initial Term (Years)	Renewals	Maximum Duration
Algeria	50	None	50
Niger	50	None	50
Senegal	50	None	50
Gabon			
Permit	5	3 times of 5 years each	20
Concession	75	1 or more times of 25 years each	None
Cameroon			
Permit	4	4 times of 4 years each	20
Concession	No provision	Renewable	No provision
Mali	50	None	50
Nigeria			
On land	30	once for 30 years	45 or
Cont. Shelf	40	once for 40 years	more
Angola	40	once for 20 years	60
Egypt	30	once for 15 years; fur- ther extension may be granted.	45 or more
Libya	50	any number	60
Morocco	50 Minimum 30	if initial term is not more than 40 years, once for ten years	50
Somalia	40	2 times for 10 years	60
Tunisia			
Permit	5	unlimited	unlimited
Concession	99	one or more for 25 years	unlimited

Source: Data from the petroleum laws of the countries - Basic Oil and Concession Contracts (New York; Petroleum Legislation, 1965) North Africa and South and Central Africa.





Renewals. Renewals are permitted under some petroleum laws, as shown in the above Table. They are granted only if the concessionaire has fulfilled his obligations during the expired term and has made a written application for renewal within the time laid down in the law. This is a common requirement of the petroleum laws that allow renewals. Renewals are not invariably made on the same terms and conditions as the expired lease or concession.

Like financial obligations under a concession contract, renewal terms are not infrequently sources of controversy between the host government and the concessionaire. The renewal provisions of the controlling laws are not always strictly followed. For the purpose of this study, reliance is placed entirely on the provisions of petroleum laws and clauses of concession contracts and not on the practices which have prevailed in some countries. The guidelines are to be found in the following provisions on the duration of exploitation rights:

#### Egypt

If it is proved to the Minister on the expiration of the Lease that the lessee has properly fulfilled all the obligations laid down in the Lease, and if he shall have given the Ministry at least six months notice in writing before such expiry, of his desire to renew the Mining Lease, the lease shall be renewed once, for the period to be fixed by the applicant,





provided it shall not exceed 15 years, in accordance with the provisions of the laws and regulations in force at the time of renewal, with the exception of those of them relating to the royalty rate which shall be 25%.<sup>118</sup>

### Nigeria

If the Lessee not less than three months before the expiration of this Lease applied in writing to the Minister for a renewal of this Lease and if it shall have paid the rent and royalties due and shall have performed its obligations under this Lease up to the date of such application, it shall be entitled to a renewal of this Lease ... for a further term of forty years on the same terms and conditions as are set out in this Lease, save this right of renewal.<sup>119</sup>

### Liberia

At the expiration of the aforesaid term, this Agreement may be renewed for an additional term of years upon such terms and conditions as both parties hereto may agree.<sup>120</sup>

### Libya

The concession may be extended for any period such that the total duration shall not exceed 60 years.

If the Company requires a renewal, it shall submit to the [Ministry of Petroleum Affairs] an application in writing for such renewal not less than three years before the end of the term of this concession.<sup>121</sup>

Clause 16 of the model concession contract of Libya, that is, the Second Schedule to the Petroleum Law, 1955, states as follows:

The contractual rights expressly created by this concession shall not be altered except by mutual consent of the parties.

In the light of this clause, it would appear that the renewal





provision gives the concessionaire the right of renewal on the same terms and conditions as the primary term unless the parties "agree" otherwise.

Other petroleum laws give no indication of the terms and conditions for renewal but undoubtedly, renewal clauses are included in concession contracts. Renewal clauses in concession contracts granted as exemptions from certain provisions of the controlling law do not always comply with the renewal provisions of the controlling law. Thus in the concession contract between International Egyptian Oil Company (C.O.P.E.) and the Government of the United Arab Republic, dated September 1963, it is provided in Article XXXIII that:

The 15 year renewal provided for by Article III, paragraph B of this contract shall be considered automatically accorded to the Grantee, without any further deed being necessary....

instead of complying with the provisions of the Law on Mines and Quarries quoted above.



## CHAPTER V

### RIGHTS OF EXPLOITATION RIGHT HOLDERS

The terms and conditions relating to exploitation rights depend principally on basic petroleum laws. However, the recent practice of association of private capital, mostly foreign, and public capital, in petroleum joint ventures, as well as the powers given to government authorities to enter into other forms of special contracts, have introduced new elements in petroleum exploitation in Africa. The controlling petroleum laws are inadequate for regulating the entirety of the legal and fiscal relations between the alien petroleum right holder, the operator and the government authorities. Most granting instruments, which also consolidate the relationships of the parties, acquire a character of their own. Thus the rights and obligations of the holder in mixed enterprises and other special contracts differ in some respects from those laid down in the controlling laws. Some of the new terms and conditions have been mentioned in Chapter IV.

In Group 1, the problem of enumerating the rights (and obligations) of the holders of petroleum concessions is further complicated by the fact that the rights and obligations





depend to some extent on (a) the model convention (agreement) applicable on the date of the grant of Permit H, or (b) if there has been a renewal, on the date of renewal, or (c) on the date of grant of the concession, whichever the applicant opts to govern his concession. The convention (Cahier des Charges) annexed to the decree granting the concession is intended to have "the effect of consolidating to the gain of the concessionaire, the juridical substance" of the relations between the exploiter and the public authority.<sup>122</sup> The "contract" consists of the convention, which is the contract itself, and the controlling general legislation to the extent it is not in conflict with the contract. This method of annexing the agreement to the decree to constitute the binding contract is a common practice in public contracts in civil law countries in Group 1 as well as in Morocco and Tunisia.

This chapter surveys the provisions of the basic laws governing the rights of exploitation right holders. Where necessary, deviations from the standard terms and conditions will be pointed out. A study of the provisions dealing with the ancillary rights of exploration right holders, which was postponed to this stage, will be made along with those of exploitation right holders.





## I. RIGHTS GRANTED

Grants of exploitation rights under the various petroleum laws confer on the holders, on an exclusive basis, the same basic legal interest, namely, the rights to drill for, produce and take oil and gas from specified areas for a limited period. The holder is also permitted to carry out additional exploration operations in the same area over which the grant of exploitation rights is made.

In some countries (Algeria, Egypt, Nigeria, Somalia), subject to certain reservations and restrictions, the rights granted under concessions and leases embrace the whole range of petroleum operations. In theory, an exploitation right holder may undertake operations for exploration, production, transportation, refining and, in some cases, marketing. In practice, however, permits or government approval must be obtained for the route and construction of pipe lines, the construction of refineries and for exporting and marketing of petroleum and products, although approvals and permits are generally given as a matter of course. In other countries (e.g. Morocco) the right to establish refineries is not included in the grant and has to be applied for as a separate grant.<sup>123</sup> The construction and operation of refineries in the host country is widely regarded as an obligation (Algeria,





Egypt, Libya, Nigeria). The last of the Preference Terms (Libya) published for the guidance of applicants for the concessions which were awarded early in 1966 envisages the establishment and operation of refineries as an obligation:

The Company undertakes to construct refineries and to establish petrochemical plants within the Kingdom of Libya, in accordance with conditions to be agreed with the Libyan Government.<sup>124</sup>

The granting clause of the Oil Mining Lease (Nigeria) gives the lessee the right to refine his products, but under Clause 20 of the same instrument, the authorities may call upon the lessee to operate a refinery in Nigeria.

## Illustrations

### Algeria

Article Cl. Under the conditions provided for by the ordinance, the regulations in force for its implementation and this agreement, the concessionaire has the right to carry on or to have all the operations necessary for the exploitation of the field carried on, namely for producing hydrocarbons and other products, their storage and their shipment.<sup>125</sup>

Article 42. Notwithstanding any law or regulation to the contrary, an authorization to exploit or a concession shall give the holder or each of its co-holders, the right, during the term of validity of such mining rights and under the conditions defined in the present title, to transport in his own installations within the area of the Organisation Commune des Régions Sahariennes, or to cause to be transported there while retaining title to them, the products of exploitation or his share of the products of exploitation to points of storage, processing, loading or large scale consumption under normal economic conditions.<sup>126</sup>





## Nigeria

2. The Lessee shall have the exclusive right in and upon the leased area to mine, bore, quarry, dig, search for, win, get, work, store, carry away, export, refine or otherwise treat and dispose of petroleum within or under the lease area or the products thereof ... [subject to the reservations, exclusions and restrictions set out in the lease.]<sup>127</sup>

## Egypt

Under the Law on Mines and Quarries, 1953, the basic rights of an exploitation right holder can be ascertained only by inference.

Unlike the preceeding excerpts, the Law on Mines and Quarries lacks a clear statement on what the basic rights are. However, concession contracts state the basic rights:

...the Grantee shall have the right to develop the petroleum fields and to produce petroleum, ... to save, transport by means of pipe line or other means, treat, process, sell in the U.A.R. market, export, ship and otherwise use such petroleum....<sup>128</sup>

The Government hereby grants unto E.G.P.C. and Pan American ... an exclusive concession for the purpose of conducting, or causing to be conducted, within the territory, exploration, development, producing (including all operations necessary or useful for the transportation of petroleum by pipelines and by other means, both within and outside the territory) and other operations for and with respect to petroleum.<sup>129</sup>

## Libya

...the [Ministry of Petroleum Affairs] hereby grants to the Company, subject to the conditions hereof and the provisions of the Law, the exclusive right for a period of ..... years to carry out geological





investigations including aerial surveys, and to search for by any other means, bore for, and extract petroleum within and over the area....

The Company shall also have the right to take away such petroleum whether by pipeline or otherwise from the concession area and to use, process, store, export and dispose of the same.<sup>130</sup>

### Substances Granted

Most petroleum laws make provisions to the effect that a grant of petroleum rights does not give the holder the right to exploit other minerals discovered in the area covered by the grant. The state maintains the discretion to make dispositions of other substances in the same area. Some laws and concession contracts try to achieve the same purpose by so defining the substances granted as to exclude mineral substances other than natural hydrocarbons and their products. In some cases, however, it is not free from doubt exactly what associated substances the holder is entitled to exploit to his own benefit.

Sometimes the question arises whether the exploitation right holder has the right to the value of substances, whether hydrocarbons or not, produced in association with oil and gas or with water produced from a well, if the substances are not specifically included in the grant. A similar question may arise where the grant is of "petroleum" if natural gas is not specifically included. The substances purported to be





conveyed under a grant of petroleum rights have been the subject of court decisions. In an appeal to the Privy Council from the Federal Supreme Court of Canada, Lord Porter, delivering the judgment in Borys v Canadian Pacific Railway Company and Another (1953) AC 217, affirmed the finding of the courts below that petroleum and gas, though each was a combination of the same elements, were separate substances. He held that a grant of "petroleum" includes natural gas in solution with oil in the ground, but not free gas in the deposit. In U. Po Naing v Burma Oil Company Limited (1929) 56 L.R. Ind. Appeal 140, the Appellant was the lessor of certain oil sites granted to him by the Government of Burma. The lease gave the Respondent the right to win oil for 21 years and reserved some royalties to the Appellant. The oil sites produced gas but no oil. The Appellant claimed that he had a right to royalties on the gas produced. It was held that the right claimed was not included in the right to royalties reserved in the lease.

In some oil deposits, helium and sulphur (occurring in combination as hydrogen sulphide) are intermingled with natural gas. The proportion of helium (2 per cent or more) or of sulphur in the mixture may be so high as to make either substance commercially producible. With respect to the non-hydrocarbon constituents of the mixture, the question is





whether sulphur and helium are included in the usual grant of "petroleum, natural gas and related substances," without additional words granting associated substances. The granting clauses of some concession contracts and the applicable provisions of some African petroleum laws will now be examined. The purpose is to see whether or not there is certainty on what associated substances are included in the grants.

### Algeria

Article C1 of the Standard Agreement for the concession of gaseous and liquid hydrocarbons qualifies the operations which the concessionaire has the right to undertake in these words: "for producing hydrocarbons and other products, their storage and their shipment."<sup>131</sup> The controlling law makes the following provision: "The concession shall apply to related substances,"<sup>132</sup> One wonders if "related substances" includes sulphur and helium, for example.

### Nigeria

The rights enumerated in the granting clause of the model Oil Mining Lease (Continental Shelf Area) relate to "petroleum within or under the leased area or the products thereof."<sup>133</sup> Clause 62(e) defines "petroleum" as

including any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata,





but does not include coal or bituminous shales or other stratified deposits from which oil can be extracted by destructive distillation.

"Mineral oils" is defined to include "bitumen, asphalt, and all other bituminous substances with the exception of coal."<sup>134</sup>

Clause 62(d) defines natural gas as

"gas obtained from boreholes and wells and consisting primarily of hydrocarbons"

Ordinarily, natural gas means hydrocarbons which at atmospheric conditions of temperature and pressure are in the gaseous phase. It seems that all naturally occurring gases, including sulphur (as hydrogen sulphide), condensate, carbon-dioxide, nitrogen, etc. produced by ordinary production methods, are included in the grant, provided the mixture of gases consists primarily of hydrocarbons. Therefore, it is theoretically possible that sulphur and helium, for example, may be included in the grant at one period of production but not at another, the deciding factor being the proportion of associated gases in the mixture of gases produced during the period.

Perhaps the situation envisaged will not arise in practice. It is instructive, nevertheless, to refer to two of the oil and gas lease forms used in connection with freehold leases in Canada; their habendum clauses appear to have been drawn with a view to avoiding litigation concerning the





substances purported to be granted in oil and gas leases. <sup>135</sup>

[The Lessor] ... DOTH HEREBY LEASE AND GRANT unto the Lessee all the petroleum, natural gas and related hydrocarbons (except coal and valuable stone), all other gases, and all minerals and substances (whether liquid or solid and whether hydrocarbons or not) produced in association with any of the foregoing or found in any water contained in any oil or gas reservoir (all herein-after referred to as the "leased substances")...

The above grant gives the lessee the right to work and win for his own benefit not only petroleum and natural gas but also all substances (except coal and valuable stone) producible by ordinary production methods. A similar right is given by the following clause in which the subject matter of the grant is worded thus:

...petroleum and any and all naturally occurring gases inclusive of elements or compounds extracted, derived or otherwise obtained therefrom and related hydrocarbons other than coal...

On the other hand, the exclusion of sulphur or helium from the grant may be achieved by express words reserving such substances to the grantor or by legislation reserving specific substances to the state. In the United States, for example, grants of petroleum rights made under the Mineral Leasing Act, 1920 are subject to the proviso

[t]hat the United States reserves the right to extract helium granted under the provisions of this Act,...<sup>136</sup>





### Libya

The granting clause of the model concession form contains the expression, "and extract petroleum"<sup>137</sup> and

petroleum means all natural hydrocarbons, liquid and gaseous, produced or producible from the ground and all asphalt and other solid hydrocarbons suitable for the production of liquid petroleum or gas. Petroleum does not include coal;...<sup>138</sup>

Substances other than hydrocarbons do not seem to be included in a grant expressed in the above form.

### Egypt

Article 30 of the Law on Mines and Quarries, 1953, refers to a mining lease for "a raw combustible" which is defined in Article 24 to include "Liquid crude oil of different densities, as well as the solid forms such as asphalt and ozokerite and petroliferous rocks and clays and natural gases." Actually, the subject matter of concessions is "petroleum" rather than "raw combustible". "Petroleum" means liquid crude oil of various densities, solid petroleum, such as asphalt, ozokerite, petroliferous rocks and petroleum shales, gas, casinghead gas and all other hydrocarbon substances that may be found in, and produced, or otherwise obtained, and saved from the territory under this Agreement, and all substances that may be extracted therefrom.<sup>139</sup>

A grant of "petroleum" so defined, gives the concessionaire





the right to all substances necessarily producible in normal petroleum exploitation. In the ENI concession,

"petroleum" means and includes crude oil and all liquid hydrocarbons of any specific gravity, all natural petroleum gases and condensate, all solid forms of petroleum, such as asphalt and ozokerite, and petroliferous rocks.<sup>140</sup>

This definition limits the grant to hydrocarbons only as the substances the holder may exploit to his own benefit.

#### Angola

[Granted in the Cabinda Gulf Oil Company concession are:]

Solid, liquid and gaseous hydrocarbons including naptha, ozokerite, natural gases and asphalt and in addition sulphur, helium, carbon dioxide and saline substances.<sup>141</sup>

#### Morocco

For the application of the present Dahir, there are considered as hydrocarbons all liquid, gaseous or solid natural hydrocarbons, with the exclusion of bituminous limestone and shales.<sup>142</sup>

#### Tunisia

Mines are divided into five groups and Group 2 comprises bitumen, asphalt, petroleum and other solid, liquid or gaseous hydrocarbons, helium and other rare gases.<sup>143</sup> The substances granted under the model Form of Agreement are "substances of the second group."<sup>144</sup> It follows that whereas helium is included in the grant, sulphur is not, but the inclusion of sulphur or other non-hydrocarbon, for that matter,





may be the subject of negotiations.

To summarize, the subject matter of the grant of exploitation rights is, in all cases, hydrocarbons whether in the solid, liquid or gaseous state. Apart from hydrocarbons, there is no consistency among African petroleum laws and concession contracts on the additional substances included in the grant. In some countries (Libya, Morocco) the substances granted appear to be limited to hydrocarbons whereas in some other countries (Angola, Egypt, Tunisia) it may include substances associated in nature with hydrocarbons such as sulphur or helium. There are still other countries (Algeria, Nigeria) in which it is doubtful whether sulphur or helium is included. In the interests of certainty, the granting clauses of some model concession contracts should be redrafted to resolve these doubts.

#### Nature of the Interest Acquired

In the United States and Canada there has been substantial litigation involving the juridical nature of the lessee's interest in petroleum. A detailed discussion of this subject is outside the scope of this study but a summary may provide a reference for dealing with the situation in Africa.

Briefly, the issues which the courts have had to





determine in relation to the lessee's interest include the following:

1. Whether the interest created is a mineral or royalty interest on the one hand or a leasehold interest on the other, the question being posed usually in terms of whether the instrument creating the interest is a deed or a lease.
2. Whether interests which the landowner creates in the oil and gas are corporeal or incorporeal.
3. Whether such interests are real estate or personal property.<sup>145</sup>

With respect to the lack of uniformity which characterizes the decisions involving the classification of the lessee's interest under oil and gas leases, a leading authority wrote as follows:

This type of operative act has been held to be a deed, a lease, a sale, a licence, and an optional contract, and the legal interest created by them has been held to be a profit a prendre, a corporal hereditament, an estate in oil and gas, not an estate in oil and gas, a servitude, a chattel real, real estate interest in land, not an interest in land, personal property, a freehold, a tenancy at will, property interest, and the relation of landlord and tenant.<sup>146</sup>

The author then warned of the utter futility of attempting to classify the oil and gas lessee's interest on the basis of common law interests in land.



In Canada, the tendency is to regard the lessee's interest as an exclusive profit a prendre,<sup>147</sup> to explore for and produce petroleum. On the other hand, in Texas the interest is held to be a corporal interest in the nature of a determinable fee.<sup>148</sup>

There is a dearth of case laws involving the juridical nature of the interests of the petroleum right holder in Africa. This lack is principally due to the absence of freehold leasing system as opposed to state leasing system which is the practice in Africa. The decided cases in Canada and the United States dealing with the nature of a petroleum right holder's interest are in connection with incidents of private freehold ownership of oil and gas in place. Among the issues involved in the cases are: taxation of the lessee's legal interest, succession to the lessee's interests, the operation of Homestead Acts and separate property of married women. Furthermore, petroleum activities in Africa are of comparatively recent times and all leases and concession contracts embody arbitration clauses for settling disputes that would otherwise be determined by the courts. It would contribute little to attempt to speculate on how the courts of different jurisdictions would decide an issue involving imaginary sets of facts. It is proposed, instead, to examine relevant





provisions of African petroleum laws to see if they offer any guide.

The petroleum laws and mining codes of the laws in Group 1 make provisions concerning the nature of the interest in question.

Algeria. Liquid and gaseous hydrocarbons, the fixed machines, fixed equipment and buildings used in the operations are deemed to be immovable property.<sup>149</sup> Machines, equipment and materials directly in use in exploitation of deposits are deemed to be immovables by reason of their use. "The grant of a concession creates a real property right which may be mortgaged...and which is distinct from title to the surface."<sup>150</sup>

Cameroon. An exploration permit is deemed to be "personal property incapable of partition, lease, mortgage, but capable, with permission, of assignment."<sup>151</sup> A mining permit is also deemed to be personal property, but it is capable of assignment and lease. A mining concession, on the other hand, is deemed to be "a limited estate in real property, distinct from the ownership of the surface, capable of mortgage and with permission, of assignment, lease, amalgamation or partition; conferring the quality of real property upon its appurtenances" and is governed by real property law.<sup>152</sup>



Gabon. Unlike the mining code of Cameroon "Exploration permits constitute indivisible real property rights which are not capable of leasing nor of mortgage" but are assignable and transferable.<sup>153</sup> Exploitation concessions are in the same category as those of Cameroon.

Group 1 laws, it will be recalled, are identical to, or are based on, the Sahara Petroleum Code which, in turn, employs civil law concepts. Group 1 laws are in agreement in regarding concession rights as real property.

The Decree of January 1, 1953 (Tunisia) on Mines has provisions similar to those of Group 1; exploration permits are deemed movable property whereas concessions are deemed to be real property.<sup>154</sup>

Practically all the laws in Groups 2 and 3 lack provisions that characterize the legal interest of an oil and gas lessee. Under Group 2 laws, based on common law concepts, perhaps the approach to be adopted in determining the nature of the interest would be to ascertain the intentions of the parties as expressed in the granting instrument, in terms of established property interests and with a tendency to adopting the non-ownership in place theory.





## II. ANCILLARY RIGHTS

For the purpose of carrying out his exploration and exploitation operations, the petroleum right holder is given certain ancillary rights. Subject to some restrictions and reservations, some of the rights are of such a nature that he can lawfully make use of surface land in the area specified in his grant and, under certain circumstances, outside the area. Other rights are designed to give the holder the authority to undertake operations collateral to exploration and exploitation work.

### Acquisition of Surface Rights

The petroleum laws lay down the procedures for obtaining the use of surface land necessary for petroleum operations even if the lands are in the occupation or ownership of private persons. At the same time, the laws ensure that the property rights of private persons on the required lands are protected by providing for the payment of fair and adequate compensation for the loss of surface rights. In some countries the procedure for obtaining the right of entry is governed by other laws (e.g. expropriation laws), in addition to the relevant provisions of the petroleum laws.

In some countries (e.g. Libya) the right given to the





concessionaire under the concession is sufficient for him to occupy public lands if the lands are not in lawful occupation, and no further authorization is necessary.<sup>155</sup> In Algeria, if the occupation of such lands is not to be temporary (exceeding six months), the intention to occupy must be declared two months in advance to the authorities who may for cause object to the proposed occupation.<sup>156</sup> The laws of some countries (Algeria, Gabon, Cameroon, Liberia, Nigeria, Tunisia) provide that entry, occupation or use of lands by the alien petroleum right holder for the purpose of his operations must be with the prior approval of government authorities, whether the land be private or public. In Algeria the approval is necessary only if the period of occupation is to exceed six months. The requirement of government approval may be regarded as an application of the wider legal provision that the acquisition of any right or interest in or over land by an alien must be with prior written approval of the government (Group 2).

In all cases of entry on private lands and on occupied public lands, fair and adequate compensation must be paid for the rights to be acquired and the damages to be caused in consequence of the activities of the petroleum right holder or of any other person acting under his authority. Entry on unoccupied public lands is typically without the payment of a





compensation or charge. In some countries (Somalia, Libya if occupation is to be temporary, i.e. not exceeding one year), if the holder reaches agreement with the private landowner or occupier on the amount of compensation and the sum of money immediately due is paid, the holder may commence operations. He must, of course, have complied with the formalities laid down by the authorities. In other countries (Algeria, Cameroon, Gabon, Liberia, Nigeria, Tunisia) neither agreement on the amount of compensation nor its payment gives the holder a right of entry unless and until he has obtained the written approval of the appropriate government. In Group 1, Morocco and Tunisia, right of entry is granted by decree. In Algeria, Gabon and Cameroon, the holder does not enter into direct negotiation with the private owner or occupier on the issue of compensation. Instead, he applies to the appropriate minister for the land required, stating in his application the amount of compensation he is prepared to pay. The minister sets in motion an administrative machinery to grant to the holder the authority to occupy the land required.

If the holder and the private landowner or occupier fail to agree on the amount of compensation, or if there are rival claimants, the right of entry is obtained from the authorities through an administrative machinery (Algeria,





Nigeria, Gabon, Cameroon, Somalia, Tunisia) or by expropriation procedure (Libya). The holder must deposit with the appropriate authorities what sum of money the authorities consider to be the fair and adequate compensation. In all cases, the landowners whose rights are affected are allowed to submit their claims before the amounts of compensation are assessed. All disputes concerning title to the land and inadequacy of the compensation are adjudicated upon by the courts (Cameroon, Libya, Somalia, Nigeria, Tunisia).

The use of surface land may be authorized outside the licence or lease area under certain circumstances and for specified purposes. If the petroleum right is granted in offshore areas (Nigeria, Gabon, Libya) the holder is usually given the use of on-shore areas for work necessary in his activities. Pipe lines, communication facilities, harbours, housing and other structures are sometimes constructed outside the area granted in the contract. Applications for the occupation of land outside the concession area are generally treated in the same way as those for occupation within the area granted, but in Nigeria, the Minister of Mines and Power takes the necessary steps, which may include expropriation process, to procure the use of surface lands.





Illustrations

## Group 1

Algeria

Article 55. Subject to the regulatory provisions relating to each of the following subjects, the holder of exploration and exploitation mining rights may, in the areas of the Organisation Commune des Régions Sahariennes, and under the conditions set forth in the present title:

- (1) Occupy lands necessary for the conduct of exploration and exploitation work, for operations collateral thereto, for operations mentioned in paragraphs (2) and (3) below, and for the housing of personnel working on field sites;
- (2) Carry out or cause to be carried out infrastructure work necessary for the conduct, under normal economic conditions, including the transportation of materials, equipment, and extracted products, but excluding the transportation by pipeline provided for in Title III;
- (3) Perform or cause to be performed drillings and work necessary to supply the personnel, works and installations with water;
- (4) Take and use, or cause to be taken and used, materials from the ground extracted from lands within the private domain of the State or of government subdivisions, which he may dispose of, gratuitously and without restriction, for the needs of the activities referred to in paragraphs (1), (2) and (3) above.<sup>157</sup>

Article 57. If the occupation is of private lands or of lands subject to customary real property rights, and if the holders of the mining rights are unable mutually to agree with the landowners or holders of such real property rights, the occupation may be authorized by a decree...made after the latter persons shall have been allowed a given period to present their views. [The authorities] shall fix, at the





same time, a provisional and approximate dispossession indemnity, which must be deposited before the taking of possession.<sup>158</sup>

## Group 2

### Nigeria

2 (1) For the purpose of the operations hereunder and ancillary thereto in accordance with normal oil-field practice (but not for any other purpose save as in clause 54 hereto provided) the Licensee shall, [subject to the restrictions specified in the Licence], have the rights and powers -

(a) to enter and remain on the licensed lands.<sup>159</sup>

Under the same clause the licensee is given the right, subject to the approval of the Minister of Mines and Power, to cut timber, make roads and take water for the purpose of his operations. He is also permitted to construct installations including harbours, communication facilities, buildings and to dig gravel and sand, clay and stone.

## Group 3

### Libya

(10) The concession holder shall have the right to enter and occupy free of charge for the purposes of his operation under any concession granted under this Law any land within the concession area other than private land, provided it is not then in the lawful occupation of some person.

(11) If the concession holder fails to agree with a private landowner or lawful occupier of other than private land as to the terms on which he may enter and occupy the land in question the concession holder





shall immediately notify the Director. If the occupation is to be of a temporary nature, not exceeding one year, the Director shall authorize such temporary occupation upon deposit by the concession holder with the [Authorities] of a sum by way of reasonable compensation to such landowner and/or lawful occupier for loss of use of and damage to the interest in the land as the Director shall determine. If the occupation is to be for a longer period than one year the [Ministry of Petroleum Affairs] shall authorize occupation by the concession holder of the land in question upon deposit by the concession holder with the [Ministry of Petroleum Affairs] of such sum by way of reasonable compensation as the [Authorities] shall determine and the [Ministry of Petroleum Affairs] shall direct appropriate proceedings to be taken to put the concession holder into possession of the land under the law from time to time in force, as if the concession holder's operations were in all respects a work of public utility. In the event of any dispute as to the nature and extent of the interests of the claimants to the land or the amount of compensation payable by the concession holder, the [Ministry of Petroleum Affairs] shall refer the dispute for determination by an appropriate court of Law and the [Ministry of Petroleum Affairs] shall pay to the respective claimants such sum by way of compensation as may have been determined by the Court. The [Ministry of Petroleum Affairs] shall pay to or obtain from the concession holder (as the case may be) the amount by which the sum deposited by the concession holder exceeds or falls short of the total compensation payable to the claimants.<sup>160</sup>

### Other Ancillary Rights

All the petroleum laws give to the petroleum right holder the right to carry out work collateral to exploration and exploitation operations. Subject to some restrictions, he is permitted to take water, cut timber and to dig and take gravel, sand and clay. The rights may be exercised free of





charge in unoccupied public lands, but their exercise is generally subject to the approval or consent of the government authorities. The holder is also permitted to construct and maintain installations, including shipping facilities, buildings, living accommodation, communication facilities and other works required in the furtherance of his operations.

Finally, the holder is given the right to surrender parts of the area covered by his grant, to assign the whole or part of his interests and to the renewal of his lease or concession. All the petroleum laws lay down the conditions for the exercise of these rights. In particular, the renewal of a lease is typically subject to the compliance with the applicable laws and regulations and additional obligations imposed under the granting instrument. The right of assignment is typically subject to the consent of the authorities.

### III. RESTRICTIONS AND RESERVATIONS

Grants of exploration and exploitation rights do not normally give the petroleum right holder the rights to exploit other minerals. All the petroleum laws and all concession contracts of the countries contain the reservation that the authorities have the right to authorize any person to search for and exploit coal and other minerals or substances, other than petroleum, lying on or beneath the areas





covered by a licence, lease or concession. The reservations or restrictions may be for purposes other than mining. Generally, these restrictions and reservations are limited so as not to derogate from or interfere with the rights, powers and operations of the holder. The holder is not permitted to engage in operations unrelated to his authorized operations except with the permission of the authorities. He may not, for example, engage in farming, or in lumbering activities without authorization; if his concession is in off-shore areas, he must not undertake fishing activities for profit without authority.

The right of occupation and use of surface land is granted subject to a number of restrictions and reservations. The applicable provisions of all the petroleum laws are common in excluding lands held to be sacred from grants of occupation rights. Unless authorized by the authorities, the holder may not enter or occupy any land used or set apart for public purpose, cultivated lands and plantations, government stations, cities, towns, villages, cemeteries and other restricted areas. In Group 1 laws, such restricted areas are designated by decrees and authorization to occupy them is also given by decrees. In Group 2 a written consent of the authorities is sufficient authority to occupy restricted areas.





## CHAPTER VI

### OBLIGATIONS OF EXPLOITATION RIGHT HOLDERS

The obligations laid down in petroleum laws in Africa have a number of objectives. They include (1) ensuring that petroleum operations are carried out in accordance with good oilfield practice, with a view to obtaining the optimum yield compatible with efficient conservation and economic exploitation; (2) offering employment opportunities to the nationals of the host country and to train them for the purpose of the man-power needs of the industry; and (3) achieving maximum revenue to the state, consistent with the need to encourage exploration and exploitation. This chapter examines some of the provisions of the petroleum laws and regulations which are designed to achieve these objectives during the exploitation stage.

The grant of exploitation rights over a specified area includes the right to carry out exploration work in the same area. Similarly, the obligations laid down for the exploitation stage normally include most of the obligations which exploration right holders are required to fulfil. The work and other obligations that govern exploration work have been considered.<sup>161</sup> Therefore, this chapter will concentrate on the





additional or special obligations of the petroleum right holder which are laid down to regulate petroleum operations carried out after the exploration stage.

While considering work and other obligations of exploration right holders, it was stated that, among related provisions in all the three groups of petroleum laws in Africa, there are substantial similarities.<sup>162</sup> A similar observation may be made concerning most provisions that lay down the obligations of exploitation right holders. For convenience, the applicable provisions of the petroleum laws and regulations in all the three groups will be dealt with together. If the provisions of the petroleum law in any particular country differ from the general pattern, they will be pointed out.

## I. WORK OBLIGATION

Work obligations are designed to promote efficient and continuous operation. Failure to conform to a work obligation may result in the withdrawal of the rights granted.

The petroleum laws have the common provision requiring the petroleum right holder to submit periodic or annual work program and to maintain with diligence and technical efficiency, a specified minimum level of petroleum activity. Minimum annual investments are prescribed in some cases. The





program normally must include such matters as the details of the operations for determining the limits of the field, the details of producing and exploiting the field, and the production forecasts for the year. If the program is revised within the year, the revised program must also be submitted for approval. In some countries (Egypt, Tunisia) the holder is obliged to fulfil a drilling program with a specification of the number of rigs to be used.

Records of operations including samples of solid, liquid or gaseous materials found during operations are to be kept for the inspection of the authorities. The holder is also obliged to supply all technical, financial and other data requested by the mining authorities. As a general rule, provisions are made to keep secret for a stated period, all vital information received from the holder.

The extensive reports and information required from the holder are measures of government surveillance and supervision of particular holders and also they afford the authorities full information on the stages of development, new discoveries and the possibility of new operations.

#### Provisions Dealing with Conservation

None of the countries has separate legislation dealing exclusively with the measures for conservation of oil and gas.





Such measures are to be found in the controlling laws, the regulations and in the actual instrument granting exploitation rights and are, in some cases, in the form of general provisions or clauses requiring the holder to carry out his operations with good oilfield practice or to like effect. In some countries (Algeria, Cameroon, Gabon, Nigeria, Tunisia) there are somewhat detailed rules of conservation to be found in the granting instrument and in model concession forms. In Algeria the convention fixes

...the conditions under which the exploiter shall be required to use, in the delimitation, the initiation of production and the exploitation of the deposit, accepted methods and to apply them in a manner best designed to avoid losses of energy and industrial products, to assure the conservation of the deposits, and to cause a maximum economic yield in the liquid or gaseous hydrocarbons from such deposit, including the possible use of secondary recovery methods.<sup>163</sup>

The model lease form in Nigeria provides as follows:

The Lessee shall maintain all apparatus and appliances in use for the operations hereunder and all boreholes and wells capable of producing petroleum in good repair and condition and shall carry out all its operations hereunder in a proper and workmanlike manner in accordance with methods and practice customarily used in good oilfield practice; and without prejudice to the generality of the foregoing, the Lessee shall, in accordance with such practice take all steps practicable -

- (a) to control the flow and to prevent the escape or avoidable waste of petroleum discovered in or obtained from the leased area;
- (b) to prevent damage to adjoining petroleum bearing strata;
- (c) except for the purpose of secondary recovery as authorized by the Minister, to prevent the





entrance of water through boreholes and wells to petroleum bearing strata;

- (d) to prevent the escape of petroleum into any water well, spring, stream, river, lake, reservoir...<sup>164</sup>

More detailed rules covering wider aspects of conservation are set out in the Tunisian Form of Sheaf of Terms and Conditions; the form contains drilling and production regulations, standards regarding tests, transportation and disposal of products.<sup>165</sup>

Few of the petroleum laws have provisions dealing with unit operation. In Nigeria and Tunisia there are provisions giving the authorities the right, in appropriate cases, to require the operators on a single geological formation to put forward for approval plans for the working and development of the oilfield as a unit. If the operators fail to obey the order or if the plans submitted are not approved, the authorities will prepare and deliver a plan to the operators. In Nigeria, the operators have the right to refer matters in dispute to arbitrators, and unless the arbitrator decides otherwise, the plan of the authorities must be faithfully carried out.<sup>166</sup>

In theory, the provisions for periodic submission of detailed work programs, reports and data, coupled with those for regular inspection of the operations of the petroleum right holder, are additional measures to ensure that the holder observes rules of conservation. As in Libya, such





administrative measures, orders and sanctions are also used to supplement the prescribed rules of conservation if the rules are not wide or detailed enough to deal with all the problems of conservation that may arise.

It appears that the oil producing countries of Africa are not yet faced with serious problems of overproduction probably because the external markets of the international oil companies operating in Africa are able to absorb almost all production in excess of local markets. Incidentally, the ability of an applicant for exploitation rights to dispose of his products in external markets is a factor to be considered by some petroleum authorities (Libya, Algeria) before granting exploitation rights. The provisions of African petroleum laws and clauses of concession contracts dealing with conservation tend to concentrate on the avoidance of physical waste and make scanty or no provisions for the avoidance of economic waste as a means of conserving oil and gas. In contrast, in the Province of Alberta, Canada, and the United States, crude oil is generally produced under the condition of prorationing established by "state" regulatory agencies such as the Oil and Gas Conservation Board (Alberta), Texas Railroad Commission, the Louisiana Commission of Conservation and the Corporation Commission of Oklahoma and Kansas. It appears that





prorationing is a peculiarity of the North American economy. In the United States, for example, in the 1920's and early 1930's, the rule of capture was interpreted in such a way that oil and gas were legally regarded as fugacious substances, much like wild animals. Consequently, property owners in an oilfield had to produce oil as quickly as possible to prevent it from escaping or "migrating" into the possession of another property owner in the same field. Too many wells were drilled resulting in losses of reservoir energy and reserve oil but there was a general over-production. For the dual purpose of checking such losses and of controlling the flow of domestic oil into petroleum markets so as to match market demands, prorationing schemes were introduced. It will be recalled that in Africa, unlike in the United States and Canada, all subsurface mineral rights belong to only one legal person, that is, the nation and are administered by the national government. It would appear, therefore, that the situation that gave rise to and sustained prorationing in North America does not exist in Africa. In any case, no African country has adopted prorationing schemes. There is a different organization of the industry and different market problems in the United States and Canada on the one hand, from the situation in Africa, on the other. Except on a continental,





international or world-wide level for the purpose of stabilizing prices of crude products, one wonders if prorationing would be justifiable in Africa. Most of the companies have external market facilities and are under constant pressure not to limit production unreasonably and to market their products. The countries that are aspiring to attain self sufficiency in oil supplies are not likely to take measures to limit oil production.

It appears, therefore, that the industry tends to regulate itself as regards production in relation to market demands while government regulation is as limited as possible. In Group 1 laws the petroleum authorities are given the power to impose a maximum limit on production

...only for reasons of general interest concerning the economy of the French franc area as far as petroleum products are concerned,...<sup>167</sup>

Most other petroleum laws and concession contracts place no ceiling on production. So long as operations are carried out efficiently and to the satisfaction of the authorities, upper limits on production are left largely to the discretion of the exploitation right holder, based mainly on economic conditions. The applicable provisions of the petroleum law of Morocco is typical of the kind of obligation imposed:





The concessionaire is obligated to achieve as soon as possible, but within the limits of the possibility of disposal (sale) of products, the maximum rate of exploitation of the deposits;...168

In sum, there are no operating prorationing schemes to act as a check on over-production, but there are measures designed to check the loss of reservoir energy and industrial products during development and production operations as well as during the transportation of products and on the cessation of petroleum activity.

## II. SUPPLY OF NATIONAL CONSUMPTION

It was stated at the beginning of this paper that a primary aim of the countries with petroleum resources is the freedom from imports of petroleum products. The reliance on the imports of finished products which are subject to dangerous price fluctuation is seen by the oil producing countries as a threat to their economic life. It is of immense economic advantage that their petroleum resources should be used to satisfy their respective petroleum needs in priority over exports. The measures designed to assure sufficient supply of national needs of crude products have the additional effects of improving the country's trade balance and of promoting secondary industries such as refineries and petro-chemical plants (Algeria, Libya, Nigeria). In times of national





emergency, the provision of such measures in the petroleum laws serves a special purpose in the interest of national security.

If it is remembered that (1) the petroleum right holder is normally given the right either to export his products free of export duties, or to a refund of any export duties paid for the export of his products, and (2) that he is obliged to establish a refinery when it is economically feasible, it may be stated that it is not in the national interest for the law to give him an unrestricted right as regards the quantities of his products that he may export. An unrestricted right in this regard may endanger the national consumption needs of the host country, and may also give rise to a situation in which the country will be forced to drain its meagre funds in the purchase from abroad of the same or similar products that were produced within its territory, thereby becoming more and more impoverished.

#### Measures Relating to National Supply

Practically all the petroleum laws have provisions to assure sufficient supplies of petroleum and petroleum products for the internal petroleum consumption of the host country. The petroleum laws of some of the countries (Morocco, Egypt) specify that the internal petroleum needs of the state must





first be satisfied before producers may export their products. The laws of some other African countries (Algeria, Cameroon, Gabon, Libya, Spanish Sahara, Tunisia) provide in effect that the authorities may require the exploitation right holders to make available, preferentially, sufficient quantities of their products to meet the domestic consumption requirements of the country. In either case, the quota that each producer may devote to national consumption is on a pro rata basis, and the prices of the products are either agreed upon by the parties or they are specified as the current international market prices. In Tunisia, the quota is sixty per cent of each concessionaire's total production.

After the respective local consumption needs have been met in Algeria, Gabon, Cameroon and other countries of the franc zone, the producers may be required by the respective petroleum authorities to give priority to the supply of the franc zone before they may export their products to countries outside the zone.<sup>169</sup>

In Libya and Egypt the requirement for the satisfaction of local needs concerns the supply of crude oil to refineries, whereas in Algeria and Gabon "[t]his obligation may be fulfilled directly or by means of exchange."<sup>170</sup> In Tunisia the obligation may be discharged either by (1) supplying crude





oil, in which case, the royalty paid in kind may be applied to each producer's quota, or (2) supplying finished petroleum products, in which case,

[t]he prices shall be determined by reference to those of products of the same nature that are imported into Tunisia under normal conditions.<sup>171</sup>

Under the petroleum law of Nigeria the obligation is not as firm as it is under other petroleum laws in Africa. Briefly, the Nigerian model lease form provides that the Minister may "request the lessee to consider and thereupon the Lessee shall consider with the Minister the desirability and economic feasibility..."<sup>172</sup> of erecting a refinery or expanding the capacity of an existing one or of using existing facilities for refining his products "for the purpose of meeting, as may be agreed upon by the parties,"<sup>173</sup> the needs of Nigeria and other African states to which Nigeria may export refined petroleum products. Having regard to his potential products and market position, the lessee is obliged to comply with the request of the Minister.

The petroleum laws or the concession contracts of some countries (Angola, Egypt, Tunisia, Somalia) specify that the government has, in the event of national emergency, the right of preemption at fair market prices, of the whole or part of the crude or refined products of the producer. The producer





may be requested to increase his production and, if the facilities are available, to refine it, to such quantity of petroleum and petroleum products as is required for national consumption. In Egypt, even if there is no such emergency, the authorities may requisition the whole or part of the output of the lessee if he stops work or limits production unnecessarily so as to exercise an arbitrary control on the market and if a deficiency in national supply results.<sup>174</sup> It is provided, however, that in all cases of requisition of mines or products, the lessee must be invited to express his views. The lessee may apply to resume work upon the cessation of the reasons leading to the requisition order. The right to resume work is lost if he fails to apply within three months of the official notification to that effect. There is a provision for a refund of requisition compensation.<sup>175</sup>

The right of the government to purchase a specified percentage of the products of the concessionaire is given in some concession contracts. The prices to be paid by the government for the products are usually stated as the recognized world price of similar products, a specified fraction of such world price, or as may be agreed upon by the parties. In most cases, the right of purchase is limited to the quantities required for national consumption. Under Pan American's





concession of 1963 in Egypt, the government reserves the right in any calender year to purchase up to twenty per cent of the crude oil produced, at a price ten per cent less than the price of similar petroleum product at the recognized world price, unless the parties agree to a lower price.<sup>176</sup> This right may be exercised only in the interest of national needs and not for exports. Under the Franco-Algerian Agreement of 29 July, 1965, the right of Algeria to purchase natural gas is not limited to the quantities required for national consumption:

The concession-holder of hydrocarbon fields shall sell to Algeria, ex-field, the volume of gas which that country desires to acquire.<sup>177</sup>

Nowhere in the Agreement are the quantities to be acquired said to be for national needs only.

The obligation of a concession holder to sell his refined products to a government petroleum monopoly is imposed in Spanish Sahara. The holder may refine his production locally for national market if authorized by the government. Quantities of refined products in excess of national needs may be authorized for export. An uncommon obligation that may be imposed in some countries (Senegal, Tunisia) is that a holder who discovers petroleum deposits and considers their exploitation unprofitable, may be placed under the obligation





to exploit them if the authorities consider the step necessary in the interest of national consumption needs.<sup>178</sup> If this step is taken, the government assumes a financial obligation, the effect of which is to assure a return of investment with specified per cent profit thereon (ten and five per cent respectively in Tunisia and Senegal).

In conclusion, there are a variety of measures taken by the states with a view to serving national needs of the country. Among the measures adopted are: controls over the quantities of production, export controls, rights of purchase, preemption and requisition, and exceptionally, the right to compel the exploiter to produce when it is unprofitable for him to do so apart from a government guarantee of a specified return on his investment. The policy of giving national consumption priority over exports is shared by most petroleum countries of the world. Provisions designed to this end are common in the United States, in the oil-producing countries of South America, Italy, India and many others. Reserved for special mention is Clause 6 of the standard Petroleum and Natural Gas Lease of the Government of the Province of Alberta, Canada. It states as follows:

The lessee covenants, and it is an express condition upon which this lease is granted, that natural gas produced from the location shall be used within the Province of Alberta, unless the consent of the Lieutenant Governor in Council to its use elsewhere has been previously obtained.





Upon any breach of this covenant and condition occurring, whether with or without the consent or knowledge of the lessee, this lease, in so far as it relates to natural gas within and under the location, shall forthwith be terminated, shall become null and void, and shall cease to have any further force or effect, and the natural gas within and under the location shall thereupon revert to Her Majesty, freed and discharged from any interest or claim of the lessee or any person or persons whomsoever claiming by, through or under the lessee.<sup>179</sup>

It seems that this clause and similar ones in concession contracts provide a method whereby exploitation right holders may be made to serve national interests.

## Illustrations

### Algeria

Article 32. The exploiters of hydrocarbon deposits may be required, on the request of the Minister of Mines, to devote in priority the products of their exploitation to the supply of the franc zone, after having satisfied the local consumption needs of the areas of Organisation Commune des Régions Sahariennes. This obligation may be fulfilled directly or by means of exchange.<sup>180</sup>

### Nigeria

Clause 20 of the model lease form giving the authorities the right to request the lessee to construct a refinery has been summarized above.

### Egypt

Article 38. The petroleum produced by the lessee from the area covered by the lease must first be used to satisfy the requirements of refineries existing in Egypt, whether Governmental or not, up to the share of the production of each area in proportion to the total production of Egypt, provided the price of the oil used locally shall not exceed the price of exported oil.<sup>181</sup>





Article 43. In cases of emergency arising from the outbreak of war or the expectation of war on internal causes, the Government may requisition the whole or part of the output of the mine - whether crude or refined-and may request the lessee to increase production to the maximum possible limit; it may also requisition the mine itself as well as all the relevant processing and refining plants.

The Government may also take such measures, even if there are no such emergency conditions, in the event of the Lessee stopping work in the mine or plant or limiting production without necessity with resultant deficiency in the supply of the country, or if such action is intended to exercise an arbitrary control on the market.<sup>182</sup>

Article 37. The Government shall have the preferential right to purchase from the lessee not more than 20% (twenty per cent) of the petroleum produced from the area covered by the lease.<sup>183</sup>

### Libya

Article 21(2). Should refineries be established in Libya the [Ministry of Petroleum Affairs] may require a concession holder to make available at field storage to such refineries, pro rata with other concession holders and at field storage price, sufficient quantities of crude oil from his production in all concessions in Libya to meet the domestic consumption requirements of Libya...<sup>184</sup>

Under the Petroleum Regulation No. 3 of October 25, 1955, Art. 1, the Government may impose restrictions on export of petroleum or its products in cases of absolute necessity connected with the interest of the State or to satisfy the requirements of Article 21(2) above. The Royal Decree Law of 20 November, 1955, amending certain provisions of the Petroleum Law,





1955, gives the Ministry of Petroleum Affairs the right to purchase up to a specified amount of crude oil at Seaboard Terminal in Libya at posted price less a stipulated allowance.

### Tunisia

#### Article 18. Special Exploitation at the Request of the Granting Authority.

1. If in the event contemplated in Article 17, paragraph 2, [if the holder furnishes proof that petroleum cannot be exploited at a profit] the Granting Authority, solicitous of assuring the country of supplies of hydrocarbons, should nevertheless decide that the said deposit ought to be exploited, the holder would be under obligation to exploit it, on the condition that the Granting Authority guarantee to him the sale of the hydrocarbons produced at a fair price...and assuring him or [of] a margin of net profit of ten per cent (10%)<sup>185</sup>

Article 80 deals with the reservation of hydrocarbons for the need of Tunisian economy and with how the obligation is to be discharged.

### III. OBLIGATIONS RELATING TO EMPLOYMENT AND

#### TRAINING OF NATIONALS

Obligations relating to the employment and training of nationals may be regarded as measures for achieving domestic participation in the staffing of the oil company. Provisions dealing with such obligations are found in most of the petroleum laws and concession contracts in Africa. In passing, it





may be mentioned that requirements for the training and employment of nationals are also found in half the investment laws in Africa and in the policy statements of most African governments.<sup>186</sup>

These provisions of the petroleum laws have two aspects: (1) provisions dealing with the offer of employment opportunities; and (2) provisions dealing with the training of nationals.

#### Employment Opportunities

There are variations in approach of the provisions of different petroleum laws: (a) provisions which prescribe employment targets by laying down the percentage of the total staff or of skilled or unskilled personnel that must be nationals, provided that sufficient numbers of qualified nationals are available (Libya, Egypt); and (b) those which set no employment target.

Under the first category, the Petroleum Law, 1955 (Libya) sets the target at "75% of the total number of persons employed by the company in Libya" after ten years from the date of commencement of operations".<sup>187</sup> The Law on Mines and Quarries (Egypt) also specifies 75 per cent of the labor force.<sup>188</sup> These two laws also provide that the total salaries and wages of the nationals must not be less than a fixed





percentage of the total salaries of all personnel.<sup>189</sup> In Egypt, nationals must be on the board of directors of some oil companies, and other key posts may be reserved for Egyptians. In Angola, a majority of the directors must be Portuguese nationals.

Under the second Category, the obligation is not inflexible; it amounts to the concessionaire giving preference to qualified nationals in matters of employment. The rate of employment of nationals is required to be accelerated to as large extent as possible.

There are other laws and administrative procedures restricting and controlling the entry of foreign personnel. Laws dealing with immigration, investment, trade, and labor are relevant in this respect, but they are outside the scope of this study. The combined effect of these other laws and the provisions of the petroleum laws is that more and more nationals are employed and trained.

### Training of Nationals

Another obligation of the petroleum right holder which is common to most petroleum laws in Africa is that of providing training for the nationals of the host country by means of scholarships and training schemes established and run by the oil company itself. The nature of the training is





primarily such as to qualify them for employment in the technical and managerial posts as well as other positions in the industry. Scholarships are sometimes awarded for studies in fields not necessarily related to the man-power needs of the petroleum industry.

The petroleum laws of some countries (Libya, Somalia) lay down the minimum annual expenditure to be devoted to the training of nationals whereas others do not set any figure. In the latter case, the minimum annual expenditure may be a matter for future negotiation or it may be left to the discretion of the concessionaire. Individual contracts usually relate the number of scholarships, the annual expenditure and the general training scheme to levels of production or to number of years from the date of commencement of operations, or to the date of regular export of petroleum produced in the concession area.

## Illustrations

### Liberia

The Lessee shall not import unskilled labor for the carrying out of any operations under the Concession, including the Accessory Works and Installations, except in the event that the local supply shall prove inadequate for the need of Lessee, and in such event, Lessee undertakes to import only such unskilled labor as shall be acceptable to the Government.<sup>190</sup>





Nigeria

17(1) In so far as it has not already done so, the Lessee shall at the inception of the operations hereunder start a training scheme for the technical training of suitable Nigerians recruited specially, if necessary, for the purpose. Such scheme shall be directed towards the training of Nigerians for employment as tradesmen and craftsmen as required by the Lessee in the conduct of its operations hereunder.

(2) The Lessee shall also within a reasonable time commence-

(a) the training of Nigerians in supervisory posts, and

(b) the recruiting and training of professional Nigerian staff for employment in senior managerial grades.

(3) Any such scheme and any such recruitment and training, whether started before or after the inception of the operations hereunder, shall be continuously carried on by the Lessee throughout this Lease and any renewal hereof.<sup>191</sup>

Libya

(1) Provided that the requisite number having adequate skill and ability is available, the minimum number of Libyan subjects employed by the Company in Libya after 10 years from the date of commencement of operations shall have reached at least 75% of the total number of persons employed by the Company in Libya.

(2) The Company shall as from the date of commencement of regular exports from Libya of petroleum in commercial quantities produced in the concession area make an annual payment to the Libyan Government of not less than £2,500 and not more than £5,000, which payment shall be applied towards giving Libyan subjects such technical training as may be agreed upon by the Director and the Company, in order to fit them for employment in the petroleum industry or in related undertaking, provided however that the Company may each year reduce such payments by the amount which during that year it expended for the training and education of Libyan subject for such purposes in Libya or abroad.<sup>192</sup>





Egypt

Article 40. Prospecting Licences and Mining Leases may be granted to an individual or a corporate body provided that in both cases the provisions relating to the percentage of Egyptian Staff and Labor and their salaries and wages as laid down in Law 138 of 1947 ... shall apply.<sup>193</sup>

Somalia

...At such time as the production of crude oil reaches reasonable quantities, the Companies, by mutual agreement with the Government, will establish a program for the training of Somali citizens and for the sending of a certain number of these citizens to the United States of America or other foreign country for educational and training courses. To this end the Companies undertake to expend a minimum amount of Fifteen Thousand United States Dollars (\$15,000) per year for a period of not less than ten (10) years from the commencement of production operations.<sup>194</sup>

#### IV. PROVISIONS RELATING TO REVENUE

The provisions laying down the tax system and forms of payment to the governments are the major fiscal measures by which the governments regulate the share in the financial benefits of oil companies operating within their jurisdiction. The earnings of oil companies are regulated to a minor extent by other measures such as exchange restrictions but these other measures do not refer specifically to the petroleum industry. The measures that affect the profit and capital of enterprises generally are laid down by the laws dealing





with investments, corporations, commercial or similar laws. However, many countries (Algeria, Libya, Morocco, Nigeria, Senegal, Tunisia, Gabon) make special revenue provisions with respect to the petroleum industry. Thus, some financial obligations refer specially to the capital and profits of oil companies. Because these, almost by definition, are foreign companies, such obligations may appear to be discriminatory, but technically they are not, for they would equally apply to indigenous oil companies were there any operating in the country entirely on their own.

The petroleum exploitation stage is a revenue stage. The measures relating to the petroleum industry are designed to give the state a fair share in the financial benefits of the enterprise. The laws of most countries (Algeria, Angola, Egypt, Morocco, Nigeria, Gabon) have provisions the effect of which is to set definite limits on the share of the net profits accruing to oil companies.

Before dealing separately with the various forms of payment, it is necessary to point out that each form is to be viewed in relation to other forms of payment and not in isolation. The forms of payment are inter-related in such a manner that the ultimate amount due to the government from the petroleum right holder is less than an aggregate of the



various sums of money due under each and every form of payment prescribed by the petroleum and tax laws. Many laws provide, for example, that entire royalty payments are credited against tax liability, or that sums paid as yearly rent are deductible from the royalties payable in the same year, or that royalty payments are regarded as expense item for the purpose of taxation.

The purpose of this portion of the study is not to give a detailed account of the specialized field of petroleum taxation and of investment laws in Africa; instead, it is proposed to give a general account of the forms of payment laid down by petroleum laws and concession contracts as part of the obligations of petroleum right holders in Africa. The major forms of payment are listed in Appendix I, Chart IE and Chart IIF.

### Forms of Payments

Lump sum payments. (Bonus, premium, deposit, guarantee). Provision is made by some countries (Egypt, Libya, Nigeria, Spanish Sahara) for a lump sum payment to be made to the government before the grant of petroleum rights. In some countries (Egypt, Libya, Spanish Sahara) the payment is in the nature of a deposit to secure the due performance of the





obligations of the petroleum right holder. Instead of such a deposit, a guarantee by way of bond or banker's guarantee in a sufficient sum, is acceptable. In some other countries (e.g. Nigeria) the payment is part of the consideration to be given by the concessionaire for the rights granted by the host government, and it is not refundable if a grant of petroleum rights is made. The money paid as deposit is usually refundable at the expiration or a rightful termination of the rights granted if the concessionaire has fully complied with the obligations of the grant. In some cases, however, the deposit is not refundable. For example, in Spanish Sahara, if a permit is converted to exploitation concession, the deposit is not refundable. Similarly, deposits paid in connection with concessions in Western Desert of Egypt are not refundable if the government grants the concessions according to the terms of the offer made by the applicant.<sup>195</sup>

## Illustrations

### Egypt

The Department shall collect from the interested parties a cash deposit as guarantee for the execution of the conditions of licences and leases, and especially for the settlement of all sums due to the Government as royalty or rent, and for the fulfilment of obligations connected with their operations and of any other conditions. The Executive Regulations shall





specify the cases where the guarantees are to be paid, their amount and method of refund....196

The offer for each area is to be accompanied by a letter of guarantee or deposit equal to 10% of the annual minimum expenditure for the area applied for. This is only refunded in case the Government refused to grant the Concession of the area concerned according to the offer presented.197

### Nigeria

#### [Oil Prospecting Licence]

Premium. 7. The payment of a premium will be necessary before the grant of a licence;

(i) for the Continental Shelf the premium is £ 500,000 for 1,000 square miles;

(ii) for the land areas the premium will be variable and will be fixed by the Government.198

The premium in connection with oil mining lease is the same as that for an oil prospecting licence.

### Libya

An applicant may be required before the grant of a concession to deliver to the [Minister of Petroleum Affairs] a guarantee by way of bond or banker's guarantee in a sufficient sum not exceeding fifty thousand Libyan pounds (£L50,000) to secure the due performance of his obligations under all concessions held by him in Libya....199

Fees. The laws of some African countries (Libya, Egypt, Spanish Sahara) make provisions for payments to the government in connection with administrative or other services rendered by the government. The payments, commonly called fees, in relation to grants of permits and concessions, are listed in Appendix I, Charts IE and IIF. The fees





prescribed for the grant of permits in Egypt, Libya and Nigeria have been considered.<sup>200</sup> In Libya, an additional fee of 100 Libyan pounds per 100 square kilometer or pro rata is payable upon the grant of a concession.<sup>201</sup> A fee of five Egyptian pounds laid down by the Law on Mines and Quarries applies to grants of petroleum rights, whether permits or leases.<sup>202</sup>

### Illustrations

#### Libya

Article 13 [in part]

The concession holder shall in respect of each concession granted hereunder pay the following fees...:

(a) An initial fee of 100 Libyan pounds per 100 square kilometres or pro rata for part thereof of the concession area upon the grant of the concession.<sup>203</sup>

#### Egypt

Article 56. ...no application submitted by execution of this law shall be considered except after payments by the applicant of a consideration fee at the following rates: £.E. 5 for each application in respect of petroleum....<sup>204</sup>

Surface Rent. Many petroleum laws make provision for the payment of rent in relation to the areas covered by the petroleum right. No provision for the payment of surface rent is made in the petroleum law of Algeria. In some countries (Libya, Nigeria, Sierra Leone, Spanish Sahara) the





amount of rent increases per specified unit area, as the duration of the concession increases. In Libya, Morocco and Spanish Sahara the amount of rent is also determined by the location or zone in which the grant is made and, in Libya, by whether or not petroleum has been discovered in commercial quantities.<sup>205</sup> In some cases the rent is specified as a certain lump sum per annum instead of by the usual practice of basing it on a given unit area per annum (Angola, Somalia), but provision is made for lowering the stipulated lump sum if the concession area is reduced below a certain acreage (Somalia).<sup>206</sup> Some countries provide that the amount of yearly rent actually paid in respect of a given year is deducted from the royalties payable in that year (Nigeria),<sup>207</sup> if the royalty exceeds or is equal to it (Egypt),<sup>208</sup> or that sums payable as surface rents may be reduced by any royalty payable in respect of the same period (Libya).<sup>209</sup>

As will be seen from Appendix I, the amounts of rent laid down in respect of permits and licences are generally lower than those for concessions and leases (Egypt, Morocco, Nigeria, Spanish Sahara). If rentals are reasonably high, exploitation right holders are induced to develop the whole area of the concession or to surrender part of it to the government who will then grant the area surrendered to another person





able and willing to carry out exploration and exploitation work. Unlike royalties, rentals are usually independent of the quantities of production, and provide a steady revenue to the government, and in this respect, surface rent has an advantage over royalty. However, the practice of relating rents to other forms of payment, particularly royalty, diminishes the advantage almost to a vanishing point. Provisions of the petroleum laws of Libya and Nigeria quoted below may be cited as examples of the relationship between royalties and rents.

### Illustrations

#### Libya

Article 13(1)(b). [The concession holder shall pay] An annual surface rent per 100 square kilometres or pro rata for part thereof of the Concession Area held as follows:

i) For concessions located within the first and second zones, ten Libyan pounds for each of the first eight years, twenty Libyan pounds for each of the next seven years, provided that if at any time during this period of fifteen years Petroleum is found in commercial quantities the annual rent shall immediately increase to 2500 Libyan pounds for the remainder of the said period and a pro rata proportion of this increased rent shall be payable in respect of the year in which the find occurs.

ii) For concessions located within the third and fourth zones, five Libyan pounds for each of the first eight years, ten Libyan pounds for each of the next seven years provided that if at any time during this period of fifteen years Petroleum is found in commercial quantities the annual rent shall immediately increase to 2500 Libyan pounds for the remainder of the said period and a pro rata proportion of this increased





rent shall be payable in respect of the year in which the find occurs.

iii) 3,500 Libyan pounds for each of the five years from the expiry of the fifteenth year from the granting of the concession.

iv) 5,000 Libyan pounds for each year thereafter.<sup>210</sup>

Article 13. (3) Sums payable by way of annual surface rents . . . in respect of any year for a concession area shall be reduced by the amount of any royalty payable hereunder in respect of that year provided however that in no case shall the annual rent payable be less than 2500 Libyan pounds per 100 square kilometres or pro rata for part thereof.<sup>211</sup>

### Nigeria

40. (1) The Lessee shall pay...a certain yearly rent, as specified in the table hereunder written, for each acre or part of an acre for the time being comprised in the leased area:

				Per acre	
				Per annum	
In respect of the first	year of said term	.. ..	2	6	
-do-	second	-do-	.. ..	3	6
-do-	third	-do-	.. ..	4	6
-do-	fourth	-do-	.. ..	6	0
-do-	fifth	-do-	.. ..	8	0
-do-	sixth and each subsequent				
	year of the said term	.. ..	10	0	<sup>212</sup>

42 (3) From the amount of royalties payable under the foregoing provisions of this clause in respect of any year there shall be deducted the amount of certain yearly rent actually paid in respect of such year under this Lease or any other lease granted to the Lessee pursuant to the oil prospecting licence from which this lease was derived; provided that such rent is deducted once only whether from royalties payable under this Lease or any other such lease.<sup>213</sup>





Morocco

Article 30. The concessionaire must pay:

A surface charge for each year of validity of the concession payable in advance, the amount of which per square kilometer is:

Zone I - 5,000 Francs

Zone II - 15,000 Francs

Zone III - 5,000 Francs

the amount being reduced by 20% for concessions relating to a perimeter the point of which furthest from the sea is located at least 2,000 kilometers from the sea and 40% when this point is located at least 400 kilometers from the sea....<sup>214</sup>

Somalia

Article V(C) The Companies shall also pay to the Government an annual rental fee not greater than seven hundred eighty four thousand nine hundred and thirty-five U.S. dollars (\$784,935), provided that if it at any time the Concession Area shall be less than fifty two thousand three hundred and twenty-nine (52,329) square kilometers, the amount of the annual rental fee shall be reduced by fifteen U.S. dollars (\$15) for every square kilometer by which the Concession Area is less than 52,329 square kilometers....<sup>215</sup>

Royalties. The petroleum laws make provision for payments in the form of a fixed rate of royalty per unit of production. This type of payment is in the nature of compensation to the state for the depletion of petroleum resources. Such a provision is made by all the laws except the Hydrocarbon Act of December 26, 1958 (Spanish Sahara) which makes no mention of "royalty" but provides for payments in the form of tax on gross production and of net profit tax in addition to surface rents.





As regards crude oil won and saved, the commonest rate of royalty stipulated by the laws is 12.5 per cent (Group 1, Angola). In Egypt, Somalia, and Tunisia, the minimum rate of 15 per cent is laid down. In Egypt, 25 per cent is the minimum bid for the auction of exploitation areas unless the quantities of petroleum available in the areas do not justify exploitation at that rate. Except in Libya where the rate is 12.5 per cent, the royalty rate for natural gas (usually five to ten per cent but 12.5 in Somalia) is less than for crude oil. In some countries (Libya, Morocco, Tunisia) the rates of royalty specified in the petroleum laws are the minimum and individual agreements may exceed the minimum. As an exception to the common practice of laying down a flat royalty rate, in Morocco, as in Alberta, the royalty rate rises with the capacity of production. Individual concession contracts in Senegal may fix graduated scales of royalty rates in respect an annual production of less than one million tons of crude oil and 300 million cubic meters of natural gas.<sup>216</sup> In Nigeria there are three flat rates in respect of crude oil and each rate applies to production from one of three petroleum areas.<sup>217</sup> The rates come into effect when "a potential production of five hundred thousand tons of crude oil per annum has been attained,"<sup>218</sup> but before such a potential production, the rate is four shillings per ton.<sup>219</sup>





In all cases, the host government has the option to receive the royalty on crude oil in cash or kind. For the purpose of receiving royalty in cash, the basis for calculating royalty is specified in the laws or the contracts. The basis varies from country to country; the commonest is the well-head value (Group 1, Angola, Nigeria, Sierra Leone). Other bases include the average price for crude of similar grade or nature in recognized world market (Egypt) and posted price (Libya).

Royalty on natural gas is received in cash on the basis of actual sales price in the host country or, if the gas is exported, the price at the point of sale after deducting, in both cases, handling charges, duties and imposts and costs of transportation from the well-head.

It will be recalled that in many countries royalties are related to other forms of payment with the result that the concessionaire pays, for example, either rent or royalty or the difference between the two, for any given period. Finally, royalty is not payable in respect of crude oil and gas used in operations.

### Illustrations

#### Nigeria

Royalty. 8. Royalty will be imposed on all crude oil, natural gas and casinghead spirit won, saved or recovered at the following rates:





- (i) 12½ per cent of the well-head value of all crude oil won on the area including the off-shore area within the three-mile limit seawards;
- (ii) 10 per cent of the well-head value of all crude oil won on the Continental Shelf between the three-mile limit and the 10 fathom depth line;
- (iii) 8 per cent of the well-head value of all crude oil won on the Continental Shelf beyond the 10 fathom line;
- (iv) 10 per cent of the well-head value of casing-head spirit;
- (v) Twopence per 1,000 cubic feet of natural gas.<sup>220</sup>

### Morocco

Article 30. The concessionaire must pay:

b) An annual royalty on the products of the exploitation payable, at the option of the State either in cash or in kind or partly in cash and partly in kind, established in accordance with the following schedule:

1. On the annual production of crude oil and condensable products:

In % of the value of the  
production of crude oil  
and condensable products  
"F.O.B. Field"

For the portion of the production less than 50,000 tons	0%
...between 50,000 and 100,000 tons	6%
...between 100,000 and 300,000 tons	9%
...between 300,000 and 1,000,000 tons	12%
...greater than 1,000,000 tons	14%

The total amount of the royalties shall not be greater than 12.5. However, special agreements may establish a higher schedule and higher rate of the total amount of the royalty.





2. On the annual production of gas:

In % of the value or the  
production of gas "F.O.B.  
Field"

For the portion of the pro-  
duction less than 300,000,000  
cubic meters per year

0%

...greater than 300,000,000  
cubic meters per year

5%

subject to special agreement establishing a higher  
schedule.

The quantities of hydrocarbons consumed for the ex-  
ploitation or reinjected into the deposit shall not  
be taken into consideration for the calculation of  
the royalty.<sup>221</sup>

Taxation and Division of Profits. The petroleum laws  
of many African countries have detailed provisions dealing  
with petroleum taxation as a major source of revenue. The  
provisions constitute the most important limitation on the  
net earnings of petroleum right holders. Although the de-  
tails of tax provisions vary considerably from country to  
country, the pattern of taxing petroleum right holders in  
Africa seems to be based on the principle of equal division  
of net profits between the holder and the country (Angola,  
Algeria, Egypt, Libya, Morocco, Gabon, Senegal, Spanish  
Sahara). For the purpose of ascertaining the taxes due and  
payable, specific provisions establish the procedures for  
taking into account other forms of payment which the holder  
is liable to make to the government.





Taxes of General Application. Like other business enterprises in the host country, petroleum right holders are subject to taxes of general application. They are thus liable to pay taxes, lawful rates, charges and fees for the services that may be rendered them. However, total or partial exemptions from the payment of specified taxes or rates, such as import and export duties on specified goods, may be made by some laws. The petroleum laws of some countries (Angola, Libya, Morocco, Tunisia, Spanish Sahara) make express provisions dealing with the holder's obligation to pay taxes of general application.

### Illustrations

#### Libya

Article 14 [as amended by Royal Decree of 15 July, 1961]

1) The concession holder shall pay such income tax and other taxes and imposts as are payable under the Laws of Libya but shall not be subject to any form of taxation whether Government, Provincial or Municipal or other exaction of such a nature as to render him liable to taxation or other dues not payable by persons in general operating in Libya other than fees, royalties and surface rents made payable under this Law:....<sup>222</sup>

The proviso to the sub-section that deals with the payment of surtax and with the increase or decrease of payments to the Government is discussed below.





Morocco

Article 31. The concessionaire is subject to the taxes and charges stipulated in the tax laws of the country. He shall not be subject to special taxes and charges other than those enumerated in the present Dahir.<sup>223</sup>

Tax on Profits. In addition to the liability to pay general taxes, the petroleum right holder is under an obligation, in practically all the countries, to pay certain taxes which refer specifically to petroleum operations. However, the laws allow a tax holiday by postponing the time the holder will be under the obligation to pay special taxes. The postponement may be until production (or export) attains a specified amount (Libya, Morocco), or until the first sale or bulk disposal of petroleum products (Nigeria), or until a stated number of years from the regular production or export of petroleum or gas (Morocco), or until some other event occurs.

IllustrationsLibya

[The effective date for the commencement of the liability to pay surtax means] the date on which the concession holder first commences regular export in commercial quantities or regular sales in commercial quantities of petroleum derived from any of his concessions in Libya.<sup>224</sup>





Nigeria

[The accounting period for the purpose of the special tax commences from] the date of the first sale of or bulk disposal of chargeable oil by or on behalf of the company, whichever event shall be earlier,...<sup>225</sup>

Morocco

The special tax obligation apply when the "production level" has been attained or when the "effective term" has expired.<sup>226</sup>

[Article 32 defines the expressions in inverted commas as follows:]

The expression "effective level" designates a total production furnished by all the concessions held by one and the same person of 1,000 tons per day of crude oil or 1,000,000 cubic meters of gas per day, calculated over a period of 30 consecutive days;

The expression "effective term" designates the end of the period of four years as from the regular production of petroleum or gas within the perimeters granted by way of concession.

Almost all the petroleum laws adopt any one of the following methods of petroleum taxation designed to secure equal division of profits:

- (a) In some countries (Libya, Morocco, Egypt), a special tax is computed and levied on the net profits, the effect of which is that, when the special tax (in addition to normal taxes) is added to other payments to the government, the sum is equal to the balance of profits remaining to the petroleum right holder.
- (b) In other countries (Angola, Nigera), an income tax at the rate of fifty per cent of profits is imposed on the petroleum right holder.





A share, greater than 50 per cent of profits may be demanded under the laws of some countries (Algeria, Libya, Morocco, Egypt). The Franco-Algerian Agreement of 29 July, 1965, increases the fiscal liabilities of French oil companies operating in Algeria from 50 to 53 per cent for 1965-7, to 54 per cent for 1968 and 55 per cent for 1969 onward.<sup>227</sup>

The Decree of December, 1965, makes these increases applicable to all other oil companies in Algeria. In Libya, offers of a share of profits exceeding 50 per cent were made and accepted in connection with the concessions granted in 1966.<sup>228</sup>

The tax computed in accordance with the prescribed rules is theoretically the maximum amount that the state will receive. As regards the first method mentioned above, any payments in excess of the 50 per cent may be applied against the special tax in subsequent tax periods (as in Libya, Morocco, Egypt). As regards the second method, if the total amount of allowable deduction from gross income for any tax period exceeds the gross income for that period, the excess is applied against the income for a future tax period.

### Illustrations

#### Algeria

For the fiscal years 1965, 1966 and 1967, there is imposed on the companies...direct tax equal to the





amount of the difference, provided it is positive, between 53% of taxable income [as defined], and 47% of the royalty.... For the fiscal year 1968, these percentages shall be changed to 54% and 46%, and for the following fiscal years to 55% and 45% respectively.<sup>229</sup>

If a negative balance results from the preceding subparagraph, this balance may be credited by the enterprise concerned against the tax which may be due under the terms of Article 66, [dealing with the Fonds de Reconstitution de Gisements or depletion allowance whereby companies could defer payment of taxes on up to 27.5 per cent of gross revenue for five years, now abolished] and, if this leaves an excess credit, against the direct tax imposed for one or more subsequent fiscal years....<sup>230</sup>

### Libya

If in respect of any complete year from and after the effective date [defined] the total amount of the fees, rents and royalties payable under this Law and income tax other than direct taxes for which a concession holder is liable in respect of his operations and income therefrom under all petroleum concessions held by him in Libya falls short of 50% of his profits as hereinafter defined for that complete year the concession holder shall pay to [the Ministry of Petroleum Affairs] such sum by way of surtax as will make the total of his payments equal to 50% of the profits aforesaid:

If in respect of any complete year from and after the effective date the total amounts of the fees, rents and royalties payable under this Law and income tax and other direct taxes for which the concession holder is liable...exceeds 50% of the said profits of the concession holder during that complete year he shall be entitled to carry forward such excess and, so far as may be, deduct it from or set it off against the amount of income tax and surtax, if any, payable in respect of subsequent years.<sup>231</sup>

Only those royalty payments at a rate of more than 12½% are treated as a credit against such future tax





liabilities.<sup>232</sup>

#### Morocco

(a) If the total amount paid by the concessionaire by way of surface tax, annual royalty...and taxes and charges...is less than half the exploitation profits...the concessionaire shall pay a surcharge equal to the difference between  $\frac{1}{2}$  of the profits and said total;

(b) If the total of the amount referred to under (a) above is greater than  $\frac{1}{2}$  of the profits, the surplus shall be exempt.

However, special agreement may establish a higher rate than  $\frac{1}{2}$  the profits for the determination of the sur-tax.<sup>233</sup>

#### Egypt

Provisions substantially similar to the provisions of the The Petroleum Law, 1955, of Libya, cited above, are made.<sup>234</sup>

#### Nigeria

Where the total amount of the allowances...cannot be deducted...owing to there being an insufficiency of or no assessable profits of the accounting period or to the limitation imposed...such total amount or the part thereof which has not been deducted, as the case may be, shall be added to the aggregate amount to be computed...for the following accounting period...<sup>235</sup>

Where the total amount of any royalties and sums allowed to be deducted under the provisions of this section [dealing with the ascertainment of assessable tax and of chargeable tax] for any accounting period of a company exceeds the assessable tax, or where there is no assessable tax for that period, such excess or such total amount, as the case may be, shall be carried forward for deduction from assessable tax of the company...<sup>236</sup>





Computation of Chargeable Profits. The petroleum laws lay down rules for the computation of gross and net income and of taxable income. In addition, the laws and concession contracts list the non-allowable and the allowable deductions from gross income as well as what specific items are chargeable to income and expenditure columns of the periodic accounts which petroleum right holders are required to submit to the authorities. The net income for any tax period generally represents the difference between the gross income earned in the country and the expenses related to the earning of such income. A survey of the provisions dealing with taxation and the division of profits of petroleum right holders seems to indicate that, for purposes of computing the profits subject to division and taxable profits, the following are the major deductible expenses:

1. Expenses in connection with administrative overhead, rents and other charges for the use of property;
2. Annual allowances for depreciation, obsolescence and depletion related to the recovery of capital and, in some cases, to the depletion of petroleum reserves. Many petroleum laws and concession contracts contain tables of amortization rates.
3. Debts, losses and expenses in connection with petroleum operations in the host country for the tax period and not





compensated for by insurance or otherwise.

Fees, rents, royalties, income tax, profit tax and foreign taxes are not deductible for these purposes. In relation to the first method of taxation mentioned above, however, fees, rents, royalties, income tax and other normal taxes but not foreign taxes, and imposts for any tax period are taken into account in determining the total amount of payments from the holder to the government for the purpose of ascertaining whether or not the holder has paid any amount in excess of the prescribed percentage share of profits.<sup>237</sup> In the second method, such payments are deductible from assessable tax for that period (Nigeria) for the purpose of determining the tax due and payable. In Angola, yearly royalties and taxes other than stamp tax and customs duties, with some exceptions, are deducted from the fifty per cent tax on net profits.<sup>238</sup>

Individual petroleum laws and contracts may include a host of other items of deductible expenditure or may qualify some of those mentioned above. In this regard, there are as many lists of deductible expenditure as there are countries in Africa. There are some distinctive features of the tax provisions of the petroleum laws of some countries:

Algeria. Future income tax is calculated on the basis of "a reference price"; that is, prices are now computed for tax





purposes not on realized prices but on "a reference price" of \$2.08 per barrel fob the port of Bourgie.<sup>239</sup> The income tax rate on profits of oil companies is mentioned above.

Angola. In practice, concession agreements exempt the companies from normal taxes except stamp duty and customs duty, with some exceptions.<sup>240</sup>

Libya. The computations of income and of royalty in cash are based on posted price less marketing allowances of US \$.005 per barrel and a specified discount;<sup>241</sup> only those royalty payments which are in excess of 12½% rate are treated as credit against future tax.<sup>242</sup> Royalties are treated as a cost item and not as part of the government's fifty per cent share of oil revenues.<sup>243</sup> Tax is effective when exploration begins. Exploration expenses capitalized at a rate of 5%. Depreciation of tangibles is 10% flat.

Morocco. Deductible expenses include costs of reconnaissance, exploration and of drilling dry holes. Amortization of equipment is at a yearly rate of not more than 20 per cent.<sup>244</sup>

Somalia. Income tax is at the rate of 25 per cent of net income but the government may elect to substitute an alternative tax rate if in any tax period the total payments to the government is less than 50 per cent of the company's profits.<sup>245</sup>

Spanish Sahara. Tax on gross production is paid monthly at the following rates: - Zone 1, 13½ per cent in cash or kind;





Zones II and III, 12½% per cent. This tax is not refunded but is in part payment of the net profit tax at the rate of 50 per cent after the allowable deductions have been made.<sup>246</sup>

## V. CONCLUSION

The picture that emerges from a survey of the obligations laid down by the petroleum laws in Africa may thus be summarized:

1. The obligations emphasize a common demand by African countries; that is, industrialization, or a means to industrialization, in return for petroleum resources. Irrespective of the differing political inclinations of the various countries, their petroleum laws require the petroleum right holder to perform, in the interest of the host country, wider and more direct functions in the socio-economic development of the country than the petroleum laws of the Province of Alberta and the United States demand from oil companies operating within their territories. To cite only one example, in the Occidental Petroleum concession signed in March, 1966, the company "is to begin a feasibility study on using excess gas in Libya as a basis for an ammonia and urea plant in 50-50 partnership" with the Libyan government; the company will also use 2.5 per cent of its net profits in Libya for agricultural projects in some areas of Libya.<sup>247</sup>





2. Many countries impose obligations giving the government more and more control and direction over the manner in which petroleum resources are to be exploited and disposed.

3. The fiscal arrangements established by the laws are designed to achieve a balance between the interests of the concessionaire who has to invest his capital and skill and those of the host country whose petroleum resources are being depleted. The arrangements for the division of profits has been adopted by many countries as a means of securing an acceptable balance. Some countries, however, have abandoned the 50-50 formula for higher payments as regards either individual concessions, or all concessions.

4. Coupled with national participation in the industry, the principle of equal division of profits results in the concessionaire retaining much less than fifty per cent of the profits of the enterprise. The net profit of the joint venture company is first shared between the national company and the private company; then the surtax formula is applied to the private company's share. Thus, if the joint venture is owned in equal shares by the national company and the private (foreign) company, and the arrangement is that of equal division of net profits, in theory, the private company receives only 25 per cent of the profits of the joint venture.





## CHAPTER VII

### CONCLUSIONS

In recent times, changes in the political structure and the economic life of most African countries have become frequent. The continent as a whole is in a hurry for economic progress through rapid industrialization so that economic progress does not lag far behind social and political progress. Political and economic institutions change more rapidly than in the Western World where more or less similar changes over hundreds of years have crystalized into more concrete and stable forms. The susceptibility to change to which the African situation is prone sometimes makes the validity of generalizations as ephemeral as the facts on which they are based.

This study is like an observation of a single but vital stage of an experimental and formative process designed to achieve the economic and social goals which the various African governments have set themselves. Thus the laws dealing with the acquisition of oil and gas rights in Africa may be regarded as an integral part of the legal framework for economic development. In this part of the legal framework, the experimental process appears to have given rise to a number of patterns and trends that are likely to endure in spite of the changes and diversities in Africa.





Before considering the trends that are apparent in the provisions dealing with the acquisition of oil and gas rights, it is useful to recall and correlate some of the conclusions made earlier in this study.

1. Some petroleum laws in Africa lay down guidelines only, leaving the concession contracts and petroleum leases to supply the details. Many of these contracts and leases are complex and exhaustive documents detailing the legal and fiscal relationships between the petroleum right holder and the government. Some of these lengthy contracts cover almost the whole range of petroleum operations; some acquire a character of their own constituting, in effect, special laws. In contrast, the Crown petroleum lease in the Province of Alberta, Canada, is a brief document; however, the provisions of a number of statutes are deemed to be incorporated into the lease with the result that the provisions bind the lessee in the same manner as any other covenant in the lease.<sup>248</sup> One has to look outside the contract document itself for the details of a considerable portion of the legal and fiscal relationships between the Crown and the lessee. The typical concession document in Africa tries to define with maximum clarity and detail the rights and obligations of the parties.<sup>249</sup>

2. In all the countries whose petroleum laws are the subject of this study, all petroleum in place belongs to the nation as a whole and is administered on a national level by high-ranking authorities. The level of authority on





which petroleum rights are granted gives the dispositions a measure of legislative and political safeguard. Unlike in Canada and the United States, neither private persons nor provincial or state governments have the constitutional power to grant petroleum rights. The problem of exploration of petroleum resources is crucial for all developing countries; it is a matter of national importance. There is the need to secure a sufficient supply of oil to keep pace with the demands for hydrocarbons as an important factor in industrial development and rising standards of living. In the countries (Algeria, Libya, Nigeria, Egypt) that are rich in oil, the revenue from oil operations contributes a lion's share of the funds needed for national development. Since the needs are mostly national in character, it appears that the principle of national ownership of petroleum in place, laid down by pre-independence petroleum laws, provides a satisfactory level of authority for administering petroleum resources and for tackling the problems posed by petroleum operations in Africa.

It will be recalled that, as regards the granting of petroleum rights, the laws place no restrictions based on nationality and ownership and that, as in Canada and the United States, multiple operations, as opposed to monopoly concessions, is the rule.<sup>250</sup>

3. In some countries the administration of petroleum resources on a national level is facilitated by the





formation of national corporations with powers to formulate petroleum policies and to administer petroleum laws and, in some countries, with the additional powers to engage in petroleum operations. As mentioned earlier, most countries make provisions in their petroleum laws for petroleum operations by the state.

### THE TRENDS

The driving force behind the trends that are apparent in the legal framework for the acquisition of oil and gas rights in Africa seems to be (1) industrialization or a means to industrialization in return for petroleum resources; and (2) the exercise of national sovereignty over petroleum resources. It will be recalled that, in many cases, the measures adopted aim simultaneously at industrialization and at effective national control and regulation of petroleum operations. For convenience, the trends will be discussed without grouping them according to the objectives they are expected to achieve.

1. There appears to be a trend towards the formation of national petroleum companies to engage in one or more stages of petroleum operations. Apart from the fact that many petroleum laws make provision for petroleum operations by the state, some countries have established state-owned oil corporations. The EGPC<sup>251</sup> engages in exploration, production and marketing on its own and in





association with foreign companies. The SONATRACH,<sup>252</sup> the Algerian national company, undertakes hydrocarbon marketing and transportation. A decree of October 3, 1966, extends the operations of the company to include exploration, production and processing.<sup>253</sup> The Government of Libya announced in June 1966, that it would establish its own national petroleum corporation to engage in petroleum operations, and a committee has been formed to draw up a draft legislation for the state oil company.<sup>254</sup>

The general trend is that of the formation of oil corporations to operate side by side with foreign oil companies and also in partnership with such companies. The trend does not appear to be that of an exclusive state monopoly of all stages of petroleum operations like PEMEX (Petroles Mexicanos) of Mexico. There are, of course, mixed companies in which the state or its corporation is a share holder.

It is necessary, however, to mention two examples of an apparent tendency to state monopoly of some aspects of petroleum operations. Firstly, it is reported that the new pipe line to link Hassi-Messaoud and Bourgie with Algiers refinery by SONATRACH "is a further step towards an Algerian monopoly of transport of hydrocarbon which is an appreciable source of revenue for the country's finances."<sup>255</sup> Secondly, the firm manager of EGPC is





reported as saying, in March, 1966, that future oil exploration and exploitation in on-shore territory of Egypt will be reserved for the government's EGPC, but off-shore areas will be opened up for international bidding.<sup>256</sup> In passing, it will be mentioned that in Algeria and Egypt, the construction of some form of socialistic society is the guiding principle of national policy and, although private enterprise is not excluded, yet the public sector of the economy is mainly relied on for industrial development.<sup>257</sup> In contrast, state-owned petroleum companies are absent in the United States and Canada.

Having regard to the problems of requirements of capital and of qualified personnel, it is unlikely that an exclusive state monopoly will become the ultimate pattern of disposition of petroleum rights in Africa.

2. It will be recalled that a majority of the countries have introduced measures aimed at increasing the state's share of the financial benefits from petroleum operations. From time to time, the value of the financial benefits to oil producing and developing countries is in contention between foreign oil companies and the host governments. It is in connection with these financial benefits that one observes a number of patterns in African petroleum laws that are copied, as it were, from the Middle East, South America and from the Organization





of Petroleum Exporting Countries (OPEC). The patterns in question contrast rather sharply with the framework in Canada and the United States.

As regards petroleum taxation and other forms of payments to the governments, the form of taxation in a vast majority of the countries of Africa is such that the total payments due to the government are so adjusted that the government's share of the net profits of the oil-producing operations is at least equal to the net earnings of the private oil company. The adoption of this pattern of taxation (the 50-50 principle) is largely influenced by the opinion in the Middle East which prevailed at a time when oil companies operating in the Middle East were completely exempted from taxation.<sup>258</sup> The profit-sharing arrangement was put into practice for the first time in Venezuela in 1943. Saudi Arabia introduced a 20 per cent tax rate on profits on November 2, 1950, followed by another on December 27 and 29, 1950, at the rate of 50 per cent. From then on, other countries of the Middle East and those of Africa followed suit. This pattern remained for petroleum taxation and for sharing the profits from oil operations until the joint-venture arrangements came into being. As mentioned earlier, the 50-50 formula has been incorporated into joint venture arrangements thereby potentially increasing the state's share of oil company profits to far





greater than 50 per cent of the net profits of joint venture companies. Only a few countries have abandoned the 50-50 formula for higher payments.

It is clear that oil producing countries are asking for more and more benefits from foreign exploitation of their petroleum resources. They are also seeking more and more measures of government control and regulation of oil company operations. It is reasonable to expect that these trends will continue until mutually acceptable arrangements are worked out for sharing the benefits of the enterprise. National participation in the industry appears to provide an acceptable balance between foreign exploration and national interest with regard to the benefits of petroleum operation, national control and the attraction of foreign capital. However, it is left to be seen whether or not national participation is one of the trends that have come to stay. In any event, the advantages of participation, as stated earlier, seem to outweigh the advantages from any other arrangement that has been worked for the acquisition of oil and gas rights in Africa.

3. One other trend in connection with national revenue is that of the introduction of competitive bidding for petroleum reserves. Offers made in bids include royalty rates, establishment of refineries and other benefits to the host state not necessarily related to petroleum





operations. Thus, bids are not, as in the Province of Alberta, limited to lump sum payments. A majority of the petroleum laws make provisions for the bidding system.

Related to the bidding system is the practice of area relinquishment whereby petroleum right holders are obliged to surrender parts of the areas covered by their grants, according to prescribed formulae. Those parts that are established to be productive fetch more money under competitive bidding system than if granted ordinarily.

4. The last trend to be observed is related to those mentioned above. In addition to the obligations directly connected with petroleum activities, petroleum right holders are obliged to perform certain economic and social functions outside the normal scope of petroleum operations. The direct involvement of oil companies in the industrial and social projects of the host country outside the sphere of their normal activities contrasts with the obligations of petroleum right holders in Canada and the United States where no such involvement is required. Loans, agricultural projects, building of hospitals, housing schemes, to mention a few, are the kinds of obligations sometimes attached to grants of petroleum rights. Many petroleum laws in Africa appear to lay down minimum obligations and petroleum right holders are required to assist directly and indirectly in the





economic and social progress of the host country. Since many economic and social targets of many African countries are scarcely within sight, oil companies may well expect the trend of their involvement in projects, related and unrelated to normal petroleum operations, to continue side by side with the inducements offered by the governments to attract foreign investment.

Finally, African countries want industrialization as a means to an end, and petroleum resources, as well as foreign oil companies, are destined to play a major role in what appears to be a dynamic era of nation building. The effort seems to be that of making the petroleum law a more efficient and workable machinery for realizing the objectives desired by the state and, at the same time, assuring the foreign oil company of reasonable profits from its investments.



## FOOTNOTES





## FOOTNOTES

<sup>1</sup>Basic Oil Laws and Concession Contracts (Original Texts) (New York: Petroleum Legislation, 1965), North Africa I, II, Suppl. I-IX; South and Central Africa, Suppl. I-VII.

<sup>2</sup>See pp. 17-18.

<sup>3</sup>"London Letter: World crude oil production is up 7.2%, to 26 million barrels daily," World Petroleum, Vol. 35, No. 1 (January, 1964), p. 35.

<sup>4</sup>"World crude oil yield will top 32 million bpd in 1966," World Oil, Vol. 162 No. 3 (February 15, 1966), p. 120.

<sup>5</sup>Africa Research Bulletin Economic Financial and Technical Series, Vol. 3 No. 2, (February 15 - March 14, 1966), 467A.

<sup>6</sup>Quantities "to be found" represent possible ultimate discoveries and not necessarily economically recoverable quantities.

<sup>7</sup>de Lavilleon, P. "Algeria crude production potential high but needs more outlets," World Petroleum, Vol. 35 No. 4 (April, 1964), p. 10.

<sup>8</sup>Wood, C.W. "Imports/Exports in the Nine Months," World Petroleum, Vol. 35 No. 1 (January, 1964), p. 10.

<sup>9</sup>Africa Diary, Vol. V No. 20 (May 8-14, 1965).

<sup>10</sup>Africa Research Bulletin Economic Financial and Technical Series, Vol. 2 No. 7 (July 15 - August 14, 1965), 340.

<sup>11</sup>Africa Diary, Vol. V No. 49, p. 2618.

<sup>12</sup>French Associated Countries, Petroleum Legislation, Europe, France (February 1, 1966).

<sup>13</sup>Allott, Prof. A.N. "Towards the Unification of Laws in Africa," International and Comparative Law Quarterly, 14, (1966), 366-389, where the diversities among African Legal Systems is discussed in a wider context as a background to the discussion on the need for the unification of African Laws.





<sup>14</sup> Statute No. 58-1111 of November 22, 1958. Art. 1. Art. 18 contains a similar provision relating to exploitation concessions.

<sup>15</sup> Law 64 - LF - 3 of 6 April, 1964, Art. 4(1). Under Art. 4(2), an operator must obtain a licence for prospecting, a permit for exploration and a permit or concession for mining prior to commencement.

<sup>16</sup> Law No. 15/62 of June 2, 1962, Creating a Mining Code in the Republic of Gabon, Art. 5. The same article also prohibits exploration operations without authorization, permit or deed and Art. 18 prohibits exploitation except by a grant of concession or exploitation permit.

<sup>17</sup> Mining Laws (Revised March 26, 1952), s.2. Ordinary non-metallic constructional materials and similar substances are excepted and belong to the owner of the land who may exploit them without permission.

<sup>18</sup> An Ordinance to Amend and Consolidate the Law Relating to Mines and Minerals, Laws of the Federation of Nigeria, (1958 Ed.), Cap. 121, as amended by Legal Notice No. 112 of 1964, Federation of Nigeria Gazette, (1964).

<sup>19</sup> Law No. 66 of 1953 on Mines and Quarries.

<sup>20</sup> Law No. 25 of 1955, The Petroleum Law, 1955, Art. (1).

<sup>21</sup> Ibid., Art. 1(2).

<sup>22</sup> See Legal Notice No. 9 of 1959, Federation of Nigeria Gazette, 1959.

<sup>23</sup> Cole, H.M.'s review, 1 Petroleum Legislation - Africa, Libya, 1 June, 1966.

<sup>24</sup> For example, see Algeria, Statute No. 58-1111 of November 22, Art. 19.

<sup>25</sup> Government Notice No. 2675, Federation of Nigeria Gazette, Vol. 46 No. 76 (December 17, 1959); Algeria, Statute No. 58-1111 of November 22, 1958, Art. 3.

<sup>26</sup> By Law of 16 July, 1963, Art. 2 of the Petroleum Law No. 25 was amended to establish the Supreme Petroleum Affairs Council within the Ministry of Petroleum Affairs.





<sup>27</sup> Mining Laws (March 26, 1952), Art. 5.

<sup>28</sup> Ibid., Art. 4(a).

<sup>29</sup> Ibid., Art. 4(c).

<sup>30</sup> cf. Canada and the United States where private ownership of petroleum in place exists along with Federal and state ownership. 'State' in this instance means the Province or one or more of the states that make up the United States.

<sup>31</sup> Law No. 66 of 1953 on Mines and Quarries, Art. 40.

<sup>32</sup> Hydrocarbon Act of December 26, 1958, 1 Petroleum Legislation, Africa, Spanish Sahara - 1 (1 April, 1964)

<sup>33</sup> Ely, Northcutt. Summary of Mining and Petroleum Laws of the World. (Washington: U.S. Department of Interior, Bureau of Mines, 1961), p. 102.

<sup>34</sup> Mining Code of Cameroun, (1964), Art. 18(4)(b); Mining Code of Gabon, (1962), Art. 69.

<sup>35</sup> See Model Oil Prospecting Licence form (Land and Territorial Waters Areas) which conforms to Government Notice 2675, Federal Gazette No. 76 (17 December, 1959) as modified by Government Notice No. 578, Federal Gazette No. 16 (30 March, 1960). Basic Oil Laws and Concession Contracts, South and Central Africa, Nigeria, C 13 (1965); cf, Footnote No. 250.

<sup>36</sup> Statute No. 58-1111 of November 22, 1958.

<sup>37</sup> Mining Act, March 26, 1952. H.E. 25. Some office holders e.g. personnel of the Bureau of Mines and Geology and the Director, Members of the judicial powers within the territory of their jurisdiction and political and police authorities in the territory of their functions.

<sup>38</sup> Law No. 66 of 1953 on Mines and Quarries.

<sup>39</sup> The Petroleum Law, 1955. Art. 5. The Commission has been abolished and in its place was created the Supreme Petroleum Affairs Council; see footnote 26 ante.

<sup>40</sup> Ibid., Art. 6(6); also cl. 13, First Schedule.





<sup>41</sup>Government Notice No. 2675, Federation of Nigeria Gazette, Vol. 46, No. 76 (17 December, 1959).

<sup>42</sup>Mining Code, (June 2, 1962), Art. 6.

<sup>43</sup>Government Notice No. 2675, Federation of Nigeria Gazette, Vol. 46, No. 76 (December 17, 1959).

<sup>44</sup>See Tennessee Sierra Leone Mineral Oil Agreement (1962) (Ratification) Act 1962; Gazette No. 72 (1962).

<sup>45</sup>An Act Regulating the Mining and Prospecting of all Minerals within the Republic of Liberia, (1924), Art. 8.

<sup>46</sup>Dahir No. 1-58-227 (July 21, 1958), Establishing a Code Governing the Exploration and Exploitation of Hydrocarbon Deposits, Art. 8.

<sup>47</sup>See pp. 37, 41-45, 83-88, 143-147.

<sup>48</sup>Law No. 15/62 of June 2, 1962, The Mining Code.

<sup>49</sup>Government Notice No. 576, Federal Gazette No. 16, March 31, 1960.

<sup>50</sup>Government Notice No. 2675, Federal Gazette No. 76, Vol. 46 (17 December, 1959).

<sup>51</sup>Law No. 66 of 1953 on Mines and Quarries.

<sup>52</sup>The Petroleum Law, 1955, First Schedule, 2.

<sup>53</sup>See Chart 1, Appendix 1.

<sup>54</sup>The Petroleum Law, 1955, Art. 6(6) and para. 13 of First Schedule.

<sup>55</sup>Ibid., Art. 6(7).

<sup>56</sup>Law No. 66 of 1953 on Mines and Quarries, Art. 56.

<sup>57</sup>Petroleum Legislation, I, Africa, Spanish Sahara, 1 (1 April, 1964).

<sup>58</sup>See Page 109.





<sup>59</sup> Law No. 64 - LF - 3 of the 6th April, 1964, The Mining Code.

<sup>60</sup> Dahir No. 1-58-227 of July 21, 1958, Art. 19.

<sup>61</sup> See page 85.

<sup>62</sup> Dahir No. 1-58-227 of July 21, 1958, Art. 20.

<sup>63</sup> Cameroon. Law No. 64 - LF - 3 of the 6th April, 1964, The Mining Code, Art. 11(d).

<sup>64</sup> Law No. 15/62 of June 2, 1962, Creating a Mining Code in the Republic of Gabon, Art. 12.

<sup>65</sup> Law No. 66 of 1953 on Mines and Quarries, Art. 26.

<sup>66</sup> Mine Ordinance, 1951, Art. 9. Since independence, (1960) the decree is that of the Minister responsible for mines and minerals.

<sup>67</sup> Decree No. 59-1334 of November 22, 1959.

<sup>68</sup> Government Notice No. 2675. Federal Gazette No. 76 Vol. 46, (17 December, 1959).

<sup>69</sup> Government Notice No. 578, Federal Gazette No. 16 (March 31, 1960).

<sup>70</sup> Dahir No. 1-58-227, (July 21, 1958).

<sup>71</sup> As regards Group 1 Laws, this view is based on the provisions dealing with mandatory area reduction during the exploration stage. The Hydrocarbon and Mining Codes of Morocco and Tunisia respectively have provisions for area reduction as well as for maximum area permitted under exploitation rights.

<sup>72</sup> Statute No. 58-1111 of November 22, 1958, (Algeria), Art. 18 and Art. 19.

<sup>73</sup> Ibid., Art. 18.

<sup>74</sup> Ibid., Art. 24.

<sup>75</sup> Statute No. 58-1111 of November 22, 1958.





<sup>76</sup>Ibid. Under Article 7, the holder is required to delimit the field with diligence after discovery and to apply for a concession as soon as a commercial deposit is established.

<sup>77</sup>Law No. 15/62 of June 2, 1962.

<sup>78</sup>Government Notice No. 2675, Federation of Nigeria Gazette, No. 76 of 17th December, 1959.

<sup>79</sup>Law No. 66 of 1953 on Mines and Quarries. See Article 32 under which a mining lease may issue without prior prospecting licence and also "special contracts" in the second category below.

<sup>80</sup>Ibid.

<sup>81</sup>Decree No. 4137 Authorizing the Concession Agreement published in the Portuguese "Diario do Governo" Number 261, First Series dated November 18, 1957; Petroleum Legislation South and Central Africa Sup. 1 Angola A1-A29.

<sup>82</sup>Petroleum Legislation Vol. 1 Africa Tunisia 1 (July 1, 1964).

<sup>83</sup>Mineral Oils Ordinance as amended by Legal Notice No. 258 of 1959; Laws of the Federation of Nigeria (1958 edition) Cap. 120.

<sup>84</sup>Lenczowski, George. Oil and State in the Middle East (New York: Cornell University Press, 1960), pp. 10-12; Mughraby, M. Permanent Sovereignty Over Oil Resources (Beirut: The Middle East Research and Publishing Center, 1966), p. 63 et. seq.

<sup>85</sup>Mughraby, M. op. cit. at 63.

<sup>86</sup>Mughraby, M. op. cit. at 66.

<sup>87</sup>Petroleum Act, (31 July, 1957) Art. 6. The Act empowers NIOC to engage in any or all aspects of petroleum operations either alone or in partnerships.

<sup>88</sup>See Basic Oil Laws and Concession Contracts, North Africa, Sup. II, Egypt. pp. A11-124 for the Pan American Agreement of 1963; Sup. III, UAR for the 1964 Agreement.





<sup>89</sup> See Basic Oil Laws and Concession Contracts, North Africa, Sup. V Algeria, p. 1 et. seq. for the text.

<sup>90</sup> Ibid. Franco-Algerian Agreement of July 29, 1965, Art. 32.

<sup>91</sup> Petroleum Legislation Report; (New York: Petroleum Legislation Company, 1966) No. 19. 11 December 1965 - January 1966, p. 5; Annual Report, 1964-65, Petroleum Division of the Federal Ministry of Mines and Power, Lagos, Nigeria. p. 7.

<sup>92</sup> Oil and Gas Journal, Vol. 64 No. 26 (June 27, 1966) p. 112.

<sup>93</sup> Id at 4.

<sup>94</sup> Oil and Gas Journal, Vol. 64 No. 31 (August 1, 1966).

<sup>95</sup> United Nations: I Status of Permanent Sovereignty Over Natural Resources. II Report of the Commission on Permanent Sovereignty Over Natural Resources. (New York: UN publication, 1962), para. 77, p. 30.

<sup>96</sup> Africa Diary, Vol. V No. 30, p. 2426.

<sup>97</sup> Statute No. 58-1111 of November 22, 1958.

<sup>98</sup> Law No. 15/62 of June 2, 1962, The Mining Code.

<sup>99</sup> Law No. 66 of 1953 on Mines and Quarries.

<sup>100</sup> Statute No. 58-1111 of November 22, 1958.

<sup>101</sup> See p. 27.

<sup>102</sup> In Algeria, Art. 46 of the Decree No. 59-1334 of November 22, 1959, lists the information required from an applicant for a concession and includes the information from those who rely on assignment or transfer.

<sup>103</sup> The Petroleum Law, 1955, Art. 9(2).

<sup>104</sup> Ibid., Art. 9(3).

<sup>105</sup> Government Notice No. 2675, Federation of Nigeria Gazette, 17 December, 1959, p. 1685.

<sup>106</sup> Law No. 66 of 1953 on Mines and Quarries.





- 107 The Petroleum Law, 1955. Note that the Petroleum Commission was abolished by Law of 16 July, 1963, by amending Art. 2 of the Petroleum Law and establishing the Supreme Council of Petroleum Affairs.
- 108 Dahir No. 1-58-227 of Moharrem 1378 (July 21, 1958).
- 109 Government Notice No. 2675, Federation of Nigeria Gazette No. 76 (17 December, 1959), para. D, p. 1685.
- 110 Ibid.
- 111 The Petroleum Law, 1955, Art. 10(1).
- 112 Art. 31(5)
- 113 Law 15/62 of 2 June, 1962, Art. 27.
- 114 Law 64 - LF - 3 of 6 April, 1964, Art. 15(1).
- 115 Mines and Minerals Act, 1962; Alta., 1962 c 49 ss 125 and 126.
- 116 The Mineral Leasing Act, 1920. (41 STAT 437) s 226.
- 117 Agreement Between Government of Libia and J.J. Simmons Jr., February 18, 1957 Art. IX; Basic Oil Laws and Concession Contracts, South and Central Africa, Liberia, Al.
- 118 Law No. 66 of 1953 on Mines and Quarries, Art. 34 (Line mine).
- 119 Model Oil Mining Lease form (Continental Shelf Areas), Basic Oil Laws and Concession Contracts, South and Central Africa, Sup. 1, Nigeria, E 16, Cl. 50. (Line mine).
- 120 An Act Approving an Agreement between the Government of Liberia and J.J. Simmons, Jr., (February 18, 1957), Art. X. (Line mine).
- 121 The Petroleum Law, 1955, Second Schedule, Cl. 3.
- 122 Explanatory Statement to the Statute No. 58-1111 of November 22, 1958. Article 26 of the Ordinance enumerates the criteria for the legal and fiscal relations of the parties.





- <sup>123</sup> Dahir No. 1-58-227 (July 21, 1958). Establishing a Code governing the Exploration and Exploitation of Hydrocarbon Deposits.
- <sup>124</sup> Petroleum Legislation. Africa, Libya, Appendix 1, p. 2 (June, 1966).
- <sup>125</sup> Standard Agreement for the Concession of Gaseous and Liquid Hydrocarbon Field in the District of the Oasis and of the Saoura. Art. Cl.
- <sup>126</sup> Statute No. 58 of November 22, 1958.
- <sup>127</sup> Oil Mining Lease (Continental Shelf Areas) Clause 2.
- <sup>128</sup> Concession Contract between IEOC, COPE and the Government of the UAR (September, 1963); Basic Oil Laws and Concession Contracts. Sup. III North Africa, Egypt, Art. X.
- <sup>129</sup> Concession Contract between Pan American UAR Company, EGPC, and the Government of UAR covering the Gulf of Suez Area (February, 1964). The two contracts referred to are joint venture contracts.
- <sup>130</sup> Second Schedule of the Petroleum Law, 1955. Cl. 1.
- <sup>131</sup> Standard Agreement for the Concession of Gaseous and Liquid Hydrocarbon Fields in the District of the Oasis and the Saoura; Basic Oil Laws and Concession Contracts, North Africa. Sup. 1 Algeria, A-4.
- <sup>132</sup> Statute No. 58-1111 of November 22, 1958. Art. 24.
- <sup>133</sup> See Basic Oil Laws and Concession Contracts, South and Central Africa, Sup. 1, Nigeria, El Cl 2.
- <sup>134</sup> Mineral Oils Ordinance, Laws of the Federation of Nigeria (1958 Ed.) Cap. 120, S.2.
- <sup>135</sup> Lewis, D.E.L. and Thompson, A.R. Canadian Oil and Gas, Vol. 1, 1960. Div. C. Forms A.1(d) and A.2(a).
- <sup>136</sup> The Mineral Leasing Act, 1920 (41 Stat. 437) S.1.
- <sup>137</sup> Second Schedule, The Petroleum Law, 1955. Cl. 1.
- <sup>138</sup> The Petroleum Law, 1955. Art. 23.





- 139 Pan American - EGPC - UAR Concession (February, 1964).
- 140 IEOC - COPE - UAR Concession (September, 1963).
- 141 See Basic Oil Laws and Concession Contracts; South and Central Africa, Sup. 1 Angola, A2, Art. 2.
- 142 Dahir No. 1-58-227 (July 21, 1958), Art. 2.
- 143 Decree of January 1, 1953 on Mines, Art. 2.
- 144 Form of Agreement, Basic Oil Laws and Concession Contracts, North Africa, Vol. 11 Tunisia, G-8.
- 145 Williams. H.R. and Meyers. C.J. 1 Oil and Gas Law. New York: Matthew Bender and Company, 1962, p. 19, para. 201; Phillips v Springfield Crude Oil Company. Supreme Court of Kansas 76 Kan. 783; Moorer v Bethlehem Baptist Church. Supreme Court of Alabama, 1961, 272 Ala 259, 130 So 2d 367; Berkheiser v Berkheiser (1957) SCR 387; 7DLR (2d) 721 (SCC).
- 146 Summers Oil and Gas, Vol. 1A, para. 152, pp. 369-374; Lewis and Thompson, 1 Canadian Oil and Gas (1960), para 40-41.
- 147 Berkheiser v Berkheiser, ante.
- 148 Loomis v Gulf Oil Corporation, Court of Civil Appeal of Texas, 1938, 1235 W 2d 5d.
- 149 Statute No. 58-1111 of November 22, 1958, Art. 21.
- 150 Ibid., Art. 22.
- 151 The Mining Code, Law No. 64 LF - 3 of 6 April, 1964, Art. 16(1).
- 152 Ibid., Art. 16(3).
- 153 Law 15/62 of June 1962, Art. 14.
- 154 Decree of January 1, 1953 on Mines. Art. 25.
- 155 The Petroleum Law, 1955. Art. 9(10).
- 156 Statute No. 58-111 of November 22, 1958. Art. 56.
- 157 Ibid.



<sup>158</sup>Ibid.

<sup>159</sup>Oil Prospecting Licence (Land and Territorial Waters Areas). Clause 54 provides as follows: - If the Licensee shall be the holder of an oil prospecting licence or an oil mining lease over the continental shelf of Nigeria, it shall be entitled to use for purposes connected with such licence or lease any power as is specified in clause 2 hereof, subject to any terms contained in the aforesaid licence or lease.

<sup>160</sup>The Petroleum Law, 1955, Art. 9(10). See also footnote No. 107.

<sup>161</sup>See pp. 46-49.

<sup>162</sup>See pp. 46-47.

<sup>163</sup>Statute No. 58-1111 of November 22, 1958, Art. 26(6).

<sup>164</sup>Oil Mining Lease (Continental Shelf Areas), Clause 21(1).

<sup>165</sup>The terms and conditions are attached to the Agreement to comprise the concession contract.

<sup>166</sup>Oil Mining Lease (Continental Shelf Areas), Clause 20.

<sup>167</sup>Standard Agreement for the Concession of Gaseous and Liquid Hydrocarbon Fields in the Districts of the Oasis and of the Saoura. Art. 39. See Footnote No. 131.

<sup>168</sup>Decree No. 2-58-877 of 6 Moharrem 1378 (July 23, 1958) approving the Standard Terms and Conditions for Concessions of Hydrocarbon Deposits.

<sup>169</sup>See e.g. Statute No. 58-1111 of November 22, 1958 of Algeria, Art. 32.

<sup>170</sup>Ibid.

<sup>171</sup>Form of Sheaf of Terms and Conditions, annexed to the model Agreement, Art. 80 (in part)

<sup>172</sup>Oil Mining Lease (Continental Shelf Areas), Clause 20(1).

<sup>173</sup>Ibid.





174 Law No. 66 of 1953 on Mines and Quarries, Art. 43.

175 Ibid., Art. 44.

176 Petroleum Concession Agreement between the Government of UAR, EGPC and Pan American UAR Company, dated Oct. 23, 1963; Basic Oil Laws and Concession Contracts, North Africa, Sup. II Egypt (UAR) p. A 50, Art. XVII.

177 Fortext, see Basic Oil Laws and Concession Contracts, North Africa, Sup. No. V, A-2, Art. 3.

178 Sheaf of Terms and Conditions; Basic Oil Laws and Concession Contracts, North Africa, Vol. No. II, Tunisia, G.30, Art. 18; Esso Exploration Senegal Inc. Concession of 1965, Art. 16.

179 The Clause deals with nationality in a double aspect. Not only is it intended to secure Alberta its needs for gas against foreign demands, it is also intended to protect these needs as against demands of other Canadian Provinces. Under a constitution that allocates legislative power over exports, whether to other Provinces or other countries, to the federal parliament, the clause in question is an attempt by the Province of Alberta to retain control over gas should the Federal Government seek to exercise this legislative power.

180 Statute No. 58-1111 of November 22, 1958.

181 Law No. 66 of 1953 on Mines and Quarries.

182 Law No. 66 of 1953 on Mines and Quarries.

183 Ibid.

184 The Petroleum Law, 1955. Art. 21(2).

185 Form of Sheaf of Terms and Conditions, Art. 18(1).

186 Investment Laws and Regulations in Africa. (New York: U.N. Publication, Sales No. 65. II. K. 3) 1965, para. 90, p. 10.

187 Second Schedule, Clause 18(1).

188 Art. 40.





<sup>189</sup> Law No. 66 of 1953 on Mines and Quarries, Art. 40.  
The percentage in Libya is 65.

<sup>190</sup> Agreement between the Government of Liberia and J.J. Simmons Jr., February 18, 1957, Art. V. For text see Basic Oil Laws and Concession Contracts, South and Central Africa, Sup. No. I Liberia, A4.

<sup>191</sup> Oil Mining Lease (Continental Shelf Areas), Clause 17(1) - (3).

<sup>192</sup> Second Schedule to the Petroleum Law, 1955, Clause 18.

<sup>193</sup> Law No. 66 of 1953 on Mines and Quarries, Art. 40.

<sup>194</sup> Convention between the Government of the Somali Republic and Sinclair Corporation, Art. VI (1). For text see Basic Oil Laws and Concession Contracts, South and Central Africa, Sup. No. 1, B23.

<sup>195</sup> The terms of Concessions in Western Desert of the Egyptian Region of the UAR; Basic Oil Laws and Concession Contracts, North Africa, Vol. No. 1, Egypt, B3, Art. 15.

<sup>196</sup> Law No. 66 of 1953 on Mines and Quarries, Art. 59.

<sup>197</sup> The Terms of Concessions in the Western Desert of the Egyptian Region of the UAR; op. cit.

<sup>198</sup> Government Notice No. 2675, Federation of Nigeria Gazette, No. 76, Vol. 46 (17 December, 1959).

<sup>199</sup> The Petroleum Law, 1955, Art. 9(3).

<sup>200</sup> See p. 39.

<sup>201</sup> The Petroleum Law, 1955, Art. 13(a).

<sup>202</sup> Law No. 66 of 1953 on Mines and Quarries, Art. 56.

<sup>203</sup> The Petroleum Law, 1955. As amended by Decree of 15 July 1961.

<sup>204</sup> Law No. 66 of 1953 on Mines and Quarries.

<sup>205</sup> The Petroleum Law, 1955, Art. 13(b)(i).



- <sup>206</sup> Sinclair Somal et al Concession; Basic Oil Laws and Concession Contracts, South and Central Africa, Sup. No. 1, Art. V. para. (C).
- <sup>207</sup> Oil Mining Lease (Continental Shelf Areas), Clause 42(3).
- <sup>208</sup> Law No. 66 of 1953 on Mines and Quarries, Art. 31(5).
- <sup>209</sup> The Petroleum Law, 1955, Art. 13(e); Second Schedule to the Petroleum Law, 1955, Clause 9(2).
- <sup>210</sup> The Petroleum Law, 1955.
- <sup>211</sup> Ibid., Art. 13(3).
- <sup>212</sup> Oil Mining Lease (Continental Shelf Areas), op. cit.
- <sup>213</sup> Ibid.
- <sup>214</sup> Dahir No. 1-58-227 of Moharrem 1378 (July 21, 1958) Establishing a Code Governing the Exploration and Exploitation of Hydrocarbon Deposits.
- <sup>215</sup> Sinclair Somal et al., op. cit., Art. V (C).
- <sup>216</sup> Esso Exploration Senegal Inc., Concession of 1965, Art. 47B.
- <sup>217</sup> Government Notice No. 2675, op. cit., para. 8, p. 1685.
- <sup>218</sup> Oil Mining Lease (Continental Shelf Areas), op. cit., Clause 42.
- <sup>219</sup> Ibid.
- <sup>220</sup> Government Notice No. 2675, op. cit., para. 8.
- <sup>221</sup> Dahit No. 1-58-227 of Moharrem 1378 (July, 1958), Art. 30.
- <sup>222</sup> The Petroleum Law, 1955.
- <sup>223</sup> Dahir No. 1-58-227 of Moharrem 1378 (July, 1958), Art. 31.





<sup>224</sup>The Petroleum Law, 1955, Art. 14(2). But see p.162.

<sup>225</sup>The Petroleum Profit Tax Ordinance, 1959, s.2.

<sup>226</sup>Dahir No. 1-58-227 of Moharrem 1378, Art. 30.

<sup>227</sup>Title III, Art. 23 of the Agreement which modified the fiscal provisions (Title V) of the Statute 58-1111 of November 22, 1958. The Decree extends the application of the terms of the amendment to non-French companies operating in Algeria.

<sup>228</sup>Circle, Scholven Chemie, for example, offered 52 per cent profit to the Government; Union Rheinische offered 52.5 per cent; Petroleum Legislation, Vol. 1 Libya, Appendix I.

<sup>229</sup>As in footnote No. 227.

<sup>230</sup>Franco-Algerian Agreement of 29 July 1965, Art. 23.

<sup>231</sup>The Petroleum Law, 1955, Art. 1(a) and (b).

<sup>232</sup>Second Schedule, The Petroleum Law, 1955, Cl. 8(1); see also Petroleum Legislation, Vol. 1, Libya, p. 3.

<sup>233</sup>Dahir No. 1-58-227 of 4 Moharrem 1378 (July 21, 1958), Art. 3(a) and (b).

<sup>234</sup>See, for example, the Pan American Concession, Art. XVI (d); Basic Oil Laws and Concession Contracts, North Africa, Sup. No. II, Egypt, A-47.

<sup>235</sup>The Petroleum Profit Tax Ordinance, 1959, s.15(5). Federal Gazette No. 15 of 1959.

<sup>236</sup>Ibid., s.17(4).

<sup>237</sup>In Libya, royalties are not regarded as part of the Government's share of oil revenues.

<sup>238</sup>Petroleum Legislation, Vol. 1 Angola p. 2.

<sup>239</sup>See footnote No. 227.

<sup>240</sup>Petroleum Legislation, Vol. 1, Angola, p. 2.

<sup>241</sup>The Petroleum Law, 1955, Second Schedule as amended by the Royal Decree of November 20, 1965, Art. VII(1).





<sup>242</sup> Petroleum Legislation, Vol. 1 Libya, p. 3; Review by Cole, H.M. (1 June, 1966).

<sup>243</sup> Royal Decree of November 20, 1965, thus putting into operation the resoltuion of the Organization of Petroleum Exporting Countries (OPEC).

<sup>244</sup> Dahir No. 1-58-227 of Moharrem 1378, Art. 33(3).

<sup>245</sup> Sinclair Corporation Concession, Art. V, para. G.

<sup>246</sup> Petroleum Legislation, Vol. 1, Spanish Sahara, p. 3.

<sup>247</sup> Petroleum Legislation Report No. 23, (March 16 - April 25, 1966).

<sup>248</sup> e.g. The Oil and Gas Conservation Act, 1962, and some provisions of The Mines and Minerals Act, 1962 are incorporated into the lease (e.g. Part V of the latter Act).

<sup>249</sup> See Model concession documents of Algeria, Libya, Nigeria, Tunisia and the Pan American's concession documents (Egypt).

<sup>250</sup> Under the Mineral Leasing Act, 1920 (STAT. 437) s.1, of the United States, petroleum rights are granted "...to the citizens of the United States, or to any association of such persons, or to any corporation organized under the laws of the United States..." with the proviso that "citizens of another country, the laws, customs, or regulations of which, deny similar or like privileges to citizens or corporations of this country, shall not by stock ownership, stock holding, or stock control, own any interest in any lease acquired under the provisions of this act."

<sup>251</sup> The Egyptian General Petroleum Corporation.

<sup>252</sup> Soc. Nationale Algerienne de Transport de Commercialisation des Hydrocarbures.

<sup>253</sup> Africa. Research Bulletin, Economic Financial and Technical Series Vol. 3, No. 9 (September 15, 1966 - October 14, 1966), p. 601, quoting Le Monde of September 15, 1966.

<sup>254</sup> Petroleum Legislation Report, No. 28 (August - September, 1960).



<sup>255</sup>Ibid., No. 22 (1966), p. 4.

<sup>256</sup>Ibid.

<sup>257</sup>Investment Laws and Regulations in Africa; (New York: U.N. Publication, 1965), p. 5, paras. 26-29.

<sup>258</sup>Mughraby, M. Permanent Sovereignty Over Oil Resources (Beirut: The Middle East Research and Publishing Center, 1966), p. 95; Lenczowski, G. Oil and State in the Middle East, (New York: Cornell University Press, 1960), p. 70.





REFERENCES

Smith, J. L. (1985). *Journal of the American Statistical Association*, 80(395), 1000-1005.

Johnson, R. A. (1970). *Biometrika*, 57(1/2), 1-11.

\_\_\_\_\_. (1975). *Journal of the Royal Statistical Society*, 37(2), 1-10.

\_\_\_\_\_. (1980). *Journal of the American Statistical Association*, 75(375), 1000-1005.

\_\_\_\_\_. (1985). *Journal of the American Statistical Association*, 80(395), 1000-1005.

\_\_\_\_\_. (1990). *Journal of the American Statistical Association*, 85(410), 1000-1005.

\_\_\_\_\_. (1995). *Journal of the American Statistical Association*, 90(435), 1000-1005.

\_\_\_\_\_. (2000). *Journal of the American Statistical Association*, 95(455), 1000-1005.

BIBLIOGRAPHY

\_\_\_\_\_. (2005). *Journal of the American Statistical Association*, 100(470), 1000-1005.

\_\_\_\_\_. (2010). *Journal of the American Statistical Association*, 105(490), 1000-1005.

\_\_\_\_\_. (2015). *Journal of the American Statistical Association*, 110(510), 1000-1005.

\_\_\_\_\_. (2020). *Journal of the American Statistical Association*, 115(530), 1000-1005.

\_\_\_\_\_. (2025). *Journal of the American Statistical Association*, 120(550), 1000-1005.

\_\_\_\_\_. (2030). *Journal of the American Statistical Association*, 125(570), 1000-1005.

\_\_\_\_\_. (2035). *Journal of the American Statistical Association*, 130(590), 1000-1005.

\_\_\_\_\_. (2040). *Journal of the American Statistical Association*, 135(610), 1000-1005.

\_\_\_\_\_. (2045). *Journal of the American Statistical Association*, 140(630), 1000-1005.

\_\_\_\_\_. (2050). *Journal of the American Statistical Association*, 145(650), 1000-1005.

\_\_\_\_\_. (2055). *Journal of the American Statistical Association*, 150(670), 1000-1005.

\_\_\_\_\_. (2060). *Journal of the American Statistical Association*, 155(690), 1000-1005.





## BIBLIOGRAPHY

### PUBLIC DOCUMENTS AND GOVERNMENT PUBLICATIONS

Algeria. Statute No. 58-1111 of November 22, 1958.

\_\_\_\_\_. Decree No. 59-1334 of November 22, 1959.

\_\_\_\_\_. Principles of Cooperation for the Development of Sahara's Underground Resources (Evian Declarations of March 19, 1962).

\_\_\_\_\_. Sahara Protocol of August 26, 1962.

\_\_\_\_\_. Franco-Algerian Accord of July 29, 1965.

\_\_\_\_\_. Decree of 30 December, 1965.

Angola. General Law of Mines (September 20, 1906).

Cameroon. Law No. 64 - LF - 3 of 6th April, 1964.

Egypt. Law No. 66 of 1953 on Mines and Quarries. The Terms of Concessions in Western Desert of the Egyptian Region of the U.A.R. (1960).

\_\_\_\_\_. Law 86 of 1956.

Gabon. Law 15/62 of June 2, 1962, Creating the Mining Code.

Liberia. Mining Laws, 1952.

Libya. The Petroleum Law, 1955. (Law No. 25 of April 21, 1955).

\_\_\_\_\_. Petroleum Regulation No. 1 (June 26, 1955).

\_\_\_\_\_. Petroleum Regulation No. 2 (June 26, 1955).

\_\_\_\_\_. Petroleum Regulations Nos. 3 and 4 (October 25, 1955).

\_\_\_\_\_. Petroleum Regulations No. 5 (January 26, 1956).

\_\_\_\_\_. Explanatory Memorandum and Text Amending Petroleum Law of 1955 (July 15, 1961).



\_\_\_\_\_. Petroleum Regulation No. 6 (December 21, 1961).

\_\_\_\_\_. Decree of November 9, 1961.

\_\_\_\_\_. Law of July 16, 1963.

\_\_\_\_\_. Royal Decree Law of November 20, 1965.

Morocco. Dahir No. 1-58-227 of Moharrem 1378 (July 21, 1958)  
Establishing a Code Governing the Exploration and Exploitation of Hydrocarbon Deposits.

\_\_\_\_\_. Dahir No. 1-58-229 of 4 Moharrem 1378 (July 21, 1958).

\_\_\_\_\_. Decree No. 2-58-877 of 6 Moharrem 1378 (July 23, 1958).

\_\_\_\_\_. Decree No. 2-58-879 of Moharrem 1378 (July 23, 1958).

Nigeria. Mineral Oil Ordinance, Laws of the Federation of Nigeria and Lagos (1958), Cap. 120.

\_\_\_\_\_. Minerals Ordinance. Laws of the Federation of Nigeria and Lagos (1958) cap. 121.

\_\_\_\_\_. Government Notice No. 2675 of 17 December, 1959.  
Federation of Nigeria Gazette, Vol. 46, No. 76.

\_\_\_\_\_. Government Notice No. 578 of March 31, 1960.

\_\_\_\_\_. Petroleum Profit Tax Ordinance 1959, Supplement to Official Gazette No. 26, Vol. 46, 30th April, 1959 Part A.

Senegal. Ordinance No. 60-24 of 10 October, 1960 (Petroleum Code).

\_\_\_\_\_. Decree No. 64-261 of 24 March, 1964.

Sierra Leone. Tennessee Sierra Leone Mineral Oil Agreement (1962). (Ratification) Act, 1962. Official Gazette No. 72 of March, 1962.

Somalia. Mining Ordinance, 1961. (No. 13 of August 15, 1961.

Spanish Sahara. Hydrocarbon Act of December 26, 1958.

\_\_\_\_\_. Decree 977/1959 of June 12, 1959.





Alberta, Canada. Mines and Minerals Act, Alta., 1962, c. 49

Iran. Petroleum Act, 1957.

United States. Mineral Leasing Act, 1920, (41 Stat. 437).

#### BOOKS AND COLLECTIONS

Basic Oil Laws and Concession Contracts (Original Texts).

North Africa, Vols. 1 and 11, Supp. I-IX; South and Central Africa, 1 Vol., Supp. I-VII. New York: Petroleum Legislation Co., 1966.

Ely, North. Summary of Mining and Petroleum Laws of the World. Washington: U.S. Department of Interior Bureau of Mines, 1961.

Lenczowski, George. Oil and State in the Middle East. New York: Cornell University Press, 1960.

Lewis, D.E. and Thompson, A.R. Canadian Oil and Gas. Toronto: Butterworth and Co., (Canada) Ltd., 1960.

Mughraby, M. Permanent Sovereignty Over Oil Resources. Beirut: The Middle East Research and Publishing Center, 1966.

Summers, W.L. The Law of Oil and Gas. Kansas City: Vernon Book Co., 1954, 2Ed.

United Nations. Investment Laws and Regulations in Africa. New York: U.N. Document No. E/CN.14/INR/28/Rev. 2, 1965.

United Nations. I Status of Permanent Sovereignty Over Natural Resources. II Report of the Commission on Permanent Sovereignty Over Natural Resources. New York: U.N. Document No. A/AC.97/5 Rev. 2. E/3511, (Sales No. 62.V.6), 1962.

Williams, H.R. and Meyers, C.J. Oil and Gas Law. Vol. 1. New York: Matthew Bender and Company, 1962.





## ARTICLES AND PERIODICALS

Africa Diary. New Delhi: Africa Publications (India) May - December, 1965.

Africa Research Bulletin Economic Financial and Technical Series. Exeter, England: Africa Research Ltd., 1965 and 1966.

International and Comparative Law Quarterly. London: The British Institute of International and Comparative Law. Vol. 14, 1966, pp. 366-389.

Oil and Gas Journal. Tulsa, Oklahoma: The Petroleum Publishing Company, June to August 31, 1966.

Petroleum Legislation Report. New York: IPI, 1966. Barrows, Gordon, (Ed.). Petroleum Legislation, New York: IPI 1964.

World Oil. Houston, Texas: Gulf Publishing Company, Vols. 162, and 1963, February to September, 1966.

World Petroleum. New York: International Petroleum Company. Vol. 35, No. 1, 1964.



APPENDICES





CHART I

RECONNAISSANCE AND  
EXPLORATION STAGES

ALGERIA

A. Basic Qualifications  
of Applicant

Prospecting Authorization may be issued to any natural or legal person or jointly to several of such persons.  
Foreign companies are eligible.  
1. Must be holder of prospecting authorization.  
2. Permit granted only to a commercial company or association of several such companies or person(s) who undertakes to form a company to succeed to the title.  
For exploration permit "H", proof of technical and financial capacity.  
Incorporation under Algerian law not specifically required.  
State-owned companies are eligible

B. Formal Requirements

Government Agency:-  
Ministry of Industrialization and Energy.  
The Minister supervises administration of Energy and Fuel Department and Bureau of Mines and Geology as well as Algerian Petroleum Agency.  
General Requirements:-  
1. If applicant is a physical person, names in full, occupation, nationality and domicile.  
2. If a company, its registered office, capital and details of financing, management and control e.g. articles and by-laws of the company.  
Prospecting Authorization:-  
3. Area of the perimeter applied for, its precise boundaries and the administrative district involved.  
4. Previous activity of applicant in hydrocarbon exploration and exploitation.  
5. Purpose of prospecting and the general work program planned.  
6. Map of proposed region of operation with details on 1/200,000th scale.





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 LEGISLATION ON THE ACQUISITION
 

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## ANGOLA

## EGYPT

1. Nationals and non-nationals of Portugal are eligible for a grant but the main business office shall be maintained in Angola.
2. Foreigners must sign a waiver of their national rights and conduct their enterprises within the framework of existing legislation
3. Applicant must have technical and financial capacity. Capital stock of the company shall not be less than a certain amount.

1. Foreign companies are eligible subject to registration requirements.
2. Applicant must have technical and financial efficiency required for a grant of exploration licence.
3. Egyptians have priority over non-Egyptians if priority of application for prospecting licence cannot be determined.
4. An individual, or a corporate body is eligible provided in both cases provisions regarding the percentage of Egyptian Staff and Labour and their total salaries and wages are complied with.
5. A non-Egyptian granted a prospecting licence shall have an elected domicile in Egypt.

Government Agency:-

The Ministry of Overseas Territories of Portugal.

The Ministry supervises the local petroleum administration of Mines and Geological service in Angola.

1. The name, nationality, residence of applicant, if a physical person.
2. Map of the locality of the proposed permit including adjoining concessions and the names and addresses of holders of adjoining permits.

Government Agency:-

The General Petroleum Authority and the Ministry of Commerce and Industry which regulates the petroleum industry.

The Minister has the right of granting special contracts in accordance with Articles 50 and 51 of the Law 86 of 1956.

Reconnaissance Permit:-

1. Evidence that applicant is "fit to undertake such operations".

Prospecting Licence:-

2. Proof of "necessary financial and technical requirements for the purpose".
3. Cash deposit as a guarantee for observance of conditions.





## OF OIL AND GAS RIGHTS IN

## GABON

## LIBYA

1. Foreign enterprise to establish main office in Gabon.  
No restriction based on nationality.
2. Must obtain a personal authorization before a permit may be granted.
3. Must have financial and technical capacity.

No restriction based on nationality, ownership or size in the grant of reconnaissance permits and concessions but connections with Israel may adversely affect application.  
Applicant must have experience in petroleum industry and technical and financial capacity.  
Applicant company must be registered in Libya.

Government Agency:-

Ministry of Mines.

1. Application for prospecting authorization should contain certain identification of the applicant, a description of the area applied for and work program.
2. The registered office of the company, its capital and details of financing and control

Exploration Permit:-

3. Previous activity of the applicant in respect of exploration and exploitation of hydrocarbons.
4. Work program and minimum financial effort to be put into exploration.
5. Detailed particulars of the organization, registered office, management and control and shareholders of the company applicant.
6. Applications are submitted in triplicate to the Minister in charge of Mines
7. In the case of a natural person he shall state his nationality and domicile.

Government Agency:-

Supreme Petroleum Affairs Council in the Ministry of Petroleum Affairs.

1. Applications in triplicate in the form prescribed shall be submitted to the Ministry.  
Separate applications shall be submitted in respect of each petroleum zone.
2. Area applied for and particulars of eligibility of applicant e.g. compliance with relevant laws and regulations, previous activities in petroleum industry.
3. The applicant may be requested to furnish any further relevant information.
4. The furtherance of public interest is one of the factors considered before a permit is granted.
5. Maps of the permit area, sketches and reports, if any.





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 REPRESENTATIVE AFRICAN COUNTRIES
 

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## NIGERIA

## SPANISH SAHARA

No restriction based on nationality or ownership in the grant of Exploration Licence and Oil Prospecting Licence.

Proof of financial status and technical competence. Registration in Nigeria is required (including subsidiaries of foreign companies.)

An applicant, under whose national law Nigerian nationals are not permitted to acquire petroleum rights may not normally be granted petroleum rights.

Permits and licences may be granted to natural or legal persons whether nationals or not. Proof of technical skill and financial capacity must be furnished. Foreign natural or legal persons shall form a Spanish company or a foreign company with a Spanish domicile.

Applicant must not be a foreign government or its intermediary or a company which is more than one-third controlled by a foreign government.

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Government Agency:-

Petroleum Division of the Ministry of Mines and Power.

Exploration Licence:-

1. Application is to be in triplicate.
2. Should contain a map on the scale of 1:1,000,000 on which is delineated the area of application.

Oil Prospecting Licence and Oil Mining Lease.

3. Application in triplicate is made to the Permanent Secretary, Ministry of Mines and Power. Applicant should contain the following information:-
4. Evidence of financial status and technical competence of applicant.
5. Details of qualified staff to be employed.
6. Details of the work which the applicant is prepared to undertake on the area for which he has applied.
7. Details of annual expenditure on each licence area.
8. Date of commencement of operations.

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Government Agency:-

Ministry of Industry.

The documents to accompany the application are:-

1. A map of the area applied for (scale 1:50,000.)  
In zone I the map shall be defined by coordinates and in zones II and III the areas shall be indicated by grid numbers of the official maps.
2. In other zones, areas applied for with numbers of grid and boundaries.
3. Documents proving technical skill, financial capacity, type of entity, nationality, origin of capital to be invested.
4. Work and investment program signed by a Spanish mining engineer.
5. Application in triplicate, should indicate the name and address of the Spanish representative.
6. Bank guarantee - 10 pesetas per hectare in Zone II; 6 pesetas per hectare in Zone III.







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## SOMALIA

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### Prospecting Licence:-

1. Residence in Somalia or an undertaking to establish one if licence is granted.

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### Government Agency:

Ministry of Industry and Commerce.

### Prospecting Licence:-

1. The zone for which the applicant requests a prospecting licence, with planimetry in quadruplicate, on a scale not less than 1:100,000 and in the absence of this, an exact description of the confines of the area.
2. Whether liquid or gaseous hydrocarbon or both.

### Research Permit:-

3. A planimetry of the zone for which the permit is being requested, in quadruplicate, on a scale not less than 1:25,000.
4. A technical report on the zone itself and on program of research planned.



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RECONNAISSANCE AND  
EXPLORATION STAGES (Cont'd)

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ALGERIA

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## Formal Requirements (Cont'd)

7. A 1/200,000 scale sketch of the geographic zone involved with boundaries of adjoining permits, prospecting authorization and concessions within 100 km of area covered by the application.
8. A certified copy of joint venture agreement in the case of a joint application.
9. Application "must relate to an integral number of unit areas" as defined in Art. 3 of Decree No. 59-1334 of November 22, 1959.

H Permits:-

10. Must meet the requirements of 1, 2 and 8 above.
  11. Duration, boundaries of the permit applied for and the administrative district involved.
  12. Minimum financial investment during the first period of the permit.
  13. Evidence of financial and technical capacity.
  14. Maps of the permit area proposed with details.
  15. A general program and time schedule of work during initial term of permit and an agreement to submit work program annually.
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C.

No provisions on limitations on size and number of permits.





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 LEGISLATION ON THE ACQUISITION
 

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 ANGOLA
 

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 EGYPT
 

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Radius of an ordinary prospecting licence is set at 1,600 meters but larger areas have been granted under special concessions.

Reconnaissance Permit:-  
as fixed by the Minister of Commerce and Industry.

Exploration Licence:-  
Maximum 100 sq.km. (38.5 sq.mls. approx.) No. of licences is as decided by the Minister of Commerce and Industry and depends on financial and technical ability of applicant.

In Western Desert, maximum is one or two permit areas (400 sq.km. each) at a time.  
More may be granted.



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 OF OIL AND GAS RIGHTS IN
 

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 GABON
 

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 LIBYA
 

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8. Map of area applied for on a given scale showing the boundaries, location and other details of the permit area.

6. Name, residence and Post Office address of the person resident in Libya authorized to act for and on behalf of the applicant together with the power of attorney of the former.

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Prospecting Authorization:-

One or more zones defined by the Decree granting it.

No provision regarding maximum acreage for exploitation licence. Area is as defined in the granting decree.

No provision on maximum acreage for reconnaissance permit.

Area is as specified in the permit.





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 REPRESENTATIVE AFRICAN COUNTRIES
 

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 NIGERIA
 

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9. Sufficient survey data to identify the areas applied for.
10. Maps showing the position, size and shape of the area applied for on a scale of 1:1,000,000.
11. An undertaking to supply reports, maps, well-logs and samples to the government.

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 SPANISH SAHARA
 

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7. Sworn declaration that applicant does not hold permits or acreage in excess of the limits imposed by law.
8. Proof of the formation of a Spanish company.

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Any area up to 10,000 sq. mls. (Exploration Licence) and 2,000 sq. mls. maximum (Prospecting licence).

Zone I - Exploration Permit  
20 permits of maximum area of 800,000 hectares with each permit to have an area of 10,000 to 40,000 hectares.

Zone II - 4 permits (68,000 hectares each).

Zone III - 16 permits (253,000 hectares each). Areas may not be increased through subsidiaries or affiliates.





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## SOMALIA

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No provision regarding maximum area of prospecting permit and research permit.  
Applicant is required to submit a map of the zone for which permit is requested.  
One or more permits may be given to the same applicant.

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## COMPARISON OF

RECONNAISSANCE AND  
EXPLORATION STAGES (Cont'd)

## ALGERIA

D. Durations and Mandatory  
Area Reduction

Six months (Prospection Authori-  
zation) - renewal for successive  
six month periods.

Maximum five years initial term  
subject to two - maximum five -  
year extensions.

(Exploration Permit H).

On first extension permit must be  
reduced to 50% of its original  
area.

On second extension it must be  
reduced by an additional 25% of  
the remaining area.

## E. Bonus/Rentals/Fees

No provisions for bonus or rentals  
during preliminary operations  
(Prospection)

No provision for surface rentals  
during exploration.

## F. Rights Granted

1. Prospection Authorization car-  
ries a non-exclusive right to pre-  
liminary operations excluding ex-  
ploration wells. No right to con-  
cession or to dispose of production  
is conferred.

2. Exploration Permit (H Permit).  
Subject to rights under (1), the  
following rights are granted:

(a) Exclusive right to carry out  
all prospecting and exploration for  
hydrocarbons.





## LEGISLATION ON THE ACQUISITION

## ANGOLA

Three years, renewable for a further two year period.

An annual rental per square kilometer as fixed in the contract. A lump sum payable on the grant of exploration right may be demanded and is in lieu of rent for a stated number of years.

Exploration Permit

Exclusive right to:-

1. Surface exploration, geological and geophysical survey, core drilling and test drilling.
  2. To utilize or sell the substances produced in the course of its operations (subject to payment of agreed royalty)
- Transfer not permitted.

## EGYPT

As fixed by Government (Reconnaissance Permit).

One year, renewable up to the end of 4 years.

Exploration permits renewable for further periods under special conditions with additional obligations attached.

As regards exploration permits in concession areas in the Western Desert, permits are relinquished in the following order:-

25% and 50% of the permits in each concession area at the end of 3 years and 6 years respectively. After ten years only 15 permits are kept in each concession area except permits converted into leases.

No provision relating to bonus or rental for reconnaissance.

Surface rental for Exploration Licence -

£E 10 (U.S. \$28.71) during the first year.

£E 100 (U.S. \$287.10) during the second year.

£E 25 (U.S. \$71.75) during the third and fourth years per square kilometer of land in the licence.

The above rentals also apply to licences granted in the Western Desert Zones.

Reconnaissance Permit grants a non-exclusive right for the purpose of roaming to select the areas for the application for exploration licence.

Exploration "licence" gives:-

1. The exclusive right to examine by any means the subsoil and surface.
2. The right to an exploitation lease, not exceeding half the exploration area, and





## OF OIL AND GAS RIGHTS IN

## GABON

## LIBYA

Five years maximum for Prospecting Authorization. One year subject to renewal.

Exploration Permit - not exceeding five years with three renewals of at most five years each. Renewal is of right but reduction in area not exceeding half of permit area may be imposed during the life of the exploration permit prior to renewal (in 1949 S.P.A.E.F. had exploration permit of 40 years initial term, further extensions of 10 years each).

Surface tax - 10 francs C.F.A. per year per hectare (S.P.A.E.F. Concession)  
No fixed charge for issue of permit.  
No rental for the first period of validity of permit (S.P.A.E.F. Concession).  
For extensions, convention may fix rentals.

Preliminary reconnaissance permit granted on payment of 500 Libyan pounds.

1. Prospecting Authorization - Non-exclusive right to carry out surface investigation only with possible use of geophysical methods.

2. Exploration Permit - Exclusive right to carry out surface investigation to study the conditions for exploitation and the existence of exploitable hydrocarbons.

3. Right to exploitation permit and concession.

Reconnaissance Permit allows:-

1. Surface geological reconnaissance.

2. Aerial surveys, and

3. Surface geophysical operations. Drilling of exploratory wells, mechanical core drilling and seismic operations are not allowed under the permit.

No rights to prospecting or explorations are conferred.





## REPRESENTATIVE AFRICAN

## NIGERIA

1. For periods up to one year each ending on the 31st of December with option to renew for one further year (Exploration Licence).

2. On land and territorial waters, three years with renewal for a further two years (Prospecting Licence).

3. On the continental shelf, four years subject to a renewal for three years.

Further renewal for three years may be granted at the discretion of the Government.

No provision for mandatory area reduction at this stage.

## SPANISH SAHARA

Zones I and III - six years.

Zone II - eight years.

A three year extension may be obtained with a reduction of area of 25% in Zone I and 50% in Zones II and III.

A second extension of two years may be granted subject to the approval of the Council of Ministers with 25% reduction in area.

A third extension for up to three years with no reduction of area may be granted if hydrocarbons are discovered, at the end of the second extension.

Fifty pounds (U.S. \$140.00) for each calendar year or part thereof for which Exploration Permit is granted.

Before the grant of Prospecting Licence, a premium (bonus) of 500,000 pounds (U.S. \$1,400,000) for 1,000 sq. miles for the continental shelf is payable.

For the land area the premium is variable. The rent for the area under licence is two shillings per sq. mile per annum. A map showing the rates is available for inspection.

1. Exploration Licence confers a non-exclusive right to undertake geological exploration over land and territorial waters covered by the licence.

No right to the grant of prospecting licence or oil winning lease is conferred but preference may be given to holder of exploration licence.

2. Oil prospecting licence gives the holder the exclusive right

The following surface rents are paid per hectare per year:-

- |                      |           |
|----------------------|-----------|
| (a) Term of permit   | 1 peseta  |
| (b) First extension  | 2 pesetas |
| (c) Second extension | 4 pesetas |
| (d) Third extension  | 4 pesetas |

Surface rents are paid if the tax on gross production is less than the surface rent.

Surface prospecting may be carried out freely.

Includes aerial and ground geological surveys but not stratigraph wells or seismic surveys.

Exploration Permits give the right to search for hydrocarbons. A permit holder may use hydrocarbons discovered by him for his own activities. The right to select, apply for and obtain exploitation concession.

The maximum size varies with zones





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COUNTRIES

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SOMALIA

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1. Prospecting Licence - one year and is renewable.

2. "Research Permit" (Exploration) - three years with three successive extensions of two years each.

If permittee discovers a deposit which becomes converted into a concession, he may be granted a further extension, such that total duration of permit does not exceed twelve years.

3. No provision for mandatory area reduction but the Sinclair Somal Corporation Permit of May 29th, 1961 provides for 25% area reduction at the end of the first year; additional 25% at the end of the fourth year and entire balance at the end of the seventh year if no discovery is made.

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"Concession fees"

(a) Prospecting Licence or Research Permit So 15.

(b) Decree of Concession So 24.  
An annual specified lump sum rental is payable (\$200,000 in Sinclair Somal Corporation Convention).

An annual sum is payable in lieu of municipal assessment.

An annual fee (rental) is payable for the concession area.

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Exploration.

1. To conduct studies and geological and geophysical surveys including drilling of wells.

(Sinclair Somal Corporation Convention).

2. Right to concession to whole permit area less portion previously released if oil or gas is discovered in commercial quantities.





## COMPARISON OF

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RECONNAISSANCE AND  
EXPLORATION STAGES (Cont'd)

## ALGERIA

## Rights Granted (Cont'd)

- (b) To dispose freely of products during exploration and from production tests (Permit H)
3. To the grant of concession.

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G. Basic Work Obligation

1. Work to commence within stipulated time limit notably exploratory drilling.
2. Must make required minimum expenditure annually as fixed in the granting decree.
3. After discovery of likely exploitable deposit, to delimit it with maximum diligence.
4. On establishment of commercial deposit, to apply for concession and to carry out development operations.
5. Give prescribed notices e.g. before transfer of whole or part of permit or production.
6. To adopt accepted methods to avoid losses in energy and industrial products and assure the preservation of the deposit and high economic yield.
7. To communicate information required by regulations concerning drillings and geophysical records.
8. To comply with the articles of the decree setting out a period of time within which the holder must undertake certain operations, in particular exploratory drilling.



## LEGISLATION ON THE ACQUISITION

## ANGOLA

## EGYPT

3. Preferential right to exploitation lease to the remaining half subject to higher royalty payments (25%)

1. To carry out intensive exploration i.e. to fully implement exploration program approved by the authorities.
2. Commence operations within three months of approval of work program.
3. To initiate development as soon as economically feasible and advisable and to maintain continuous production.
4. To submit regular reports giving details of operations carried out.
5. Must make fixed minimum annual and total investment.

Reconnaissance:-

No special obligation; covers roaming to select areas for exploration.

Exploration:

1. To carry out effective exploration according to program submitted.
  2. To carry out drilling obligations e.g. as a condition for renewal of licence after 4 years.
  3. To commence operations within a fixed time limit and conduct continuous operations.
  4. To make required minimum annual and total expenditure during initial exploration period.
  5. To submit regular reports of operations undertaken.
- In addition, in the Western Desert, the following obligations apply
6. To fulfil a drilling program with the specification of the number of rigs to be used.





## OF OIL AND GAS RIGHTS IN

## GABON

## LIBYA

4. Right to assign or transfer  
subject to prior authorization.

1. To submit annual report of work and studies and their result supported by plans, maps as well as summary of expenses.
2. Monthly report of exploratory work done.
3. After discovery of a commercial deposit, to demarcate it.
4. To allocate a specified proportion of production to supply of Franc Zone.

1. One provision covers both exploration and exploitation (see work obligation in Chart II)
2. In addition, within 30 days after the termination of the reconnaissance permit, permittee shall submit a report containing a description of the work done. The report shall be in triplicate accompanied by maps, records and rock samples.



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 REPRESENTATIVE AFRICAN
 

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 NIGERIA
 

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1. To geological and geophysical exploration and to drill for oil.
2. To carry away and dispose of petroleum and petroleum products.
3. To the grant of "Oil Mining Lease."

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 SPANISH SAHARA
 

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1. To commence and continue exploration by geological and geophysical methods with reasonable dispatch.
2. Within six months of date of grant to begin geophysical investigation and to continue till drilling or termination of licence.
3. To drill a minimum of 12,000 ft. before the end of the third year (on shore) and fourth year (off shore).
4. Within reasonable time to commence training scheme for Nigerians in supervisory technical and managerial grades. (Prospecting Permit).
5. To carry out operations in a workmanlike manner in accordance with good oilfield practice and particularly observe conservation rules.
6. To submit reports, plans, data as prescribed and keep records of e.g. particulars of strata and subsoil drilled, depth of borehole, petroleum, water, mineral deposits encountered; Result of analyses, logs of all types, production test results.
7. To keep accounts e.g. of quantities, liquid and gaseous hydrocarbon produced and submit every half year abstracts of current accounts.

1. To carry out minimum program specified in the regulations.
2. To supply all information with respect to operations, e.g. test drilling and well information.
3. To begin exploration work within six months from the publication of award of permit.
4. To present work program for the first year within three months.
5. To make geological study of all the permit area and minimum annual investment of 25 gold pesetas per hectare in zone I; 2 gold pesetas per hectare in zone II and zone III.
6. To submit annual work program 30 days before the end of each year.
7. Different work obligation regarding average minimum investment, varying according to zone is required as a condition for renewal of permit e.g. 5 gold pesetas per hectare per year in zone I and 3.50 pesetas per hectare per year in zones II and III.







## COUNTRIES

## SOMALIA

1. To expend a stipulated total sum annually in its operations e.g. \$1,500,000 in the concession of Sinclair Somal Corporation.

"Research Permit"

2. Program of research to be submitted in advance.

3. Must begin work within specified time limits or in absence of such time limit, within 3 months from the day on which the permit was granted.

4. Must not interrupt work for a period exceeding six months.

5. No work of actual exploitation is allowed under a permit.

6. To notify the government of any discovery of gas or oil in commercial quantity.



## APPENDIX I

## COMPARISON OF LEGISLATION

## CHART II

EXPLOITATION STAGE  
LEASES AND CONCESSIONS

## ALGERIA

## A. Qualification of applicant. Basic Requirements

1. Must be the holder of exploration permit if the proposed concession area is under a permit.
  2. Proof of technical and financial capacities for exploitation operations.
- These capacities are assumed in favor of a permit holder.

## B. Formal Requirements

Concessions

1. As in Exploration Stage under (1) and (2) of General Requirements. Application shall set forth:-
2. The boundaries and areas of the concession applied for and the administrative district involved.
3. If applicant has applied for the model-convention in force at the date of the grant of convention, the standard agreement. This applies only to H Permits granted prior to the commencement of Ordinance No. 58-1111 of November 22, 1958.
4. Particular conditions which the applicant wishes to be inserted into the concession e.g. obligation to construct refineries.
5. If right to a concession is involved, the data and information to support it.
6. A certified copy of protocols, agreements or contracts which bind applicants to one another and to third parties.





## ON THE ACQUISITION OF

## ANGOLA

## EGYPT

As for reconnaissance and exploration stages.

Applicant should be a holder of exploration permit over the area of the proposed exploitation lease. As regards application for exploitation leases through public auction, the applicant need not be a holder of exploration permit. In the latter situation, registration and proof of financial and technical capacities are required. An individual or a corporate body is eligible if he has a prescribed percentage of Egyptian Staff and Labour, paying them not less than the prescribed total salary and wages.

A foreign lessee shall have an elected domicile in Egypt where all books and documents pertaining to his operations shall be kept.

1. Detailed information of the applicant company - organization, main business office, registered office.
2. Undertaking to transfer main business office to, and maintain it in the territory within Angola if the applicant is a foreign company.
3. Undertaking to effect changes in the corporate organization and certificate of incorporation of the applicant to make room for Portuguese nationals as majority members of the Board of Directors.

#### Mining Lease.

1. Proof that applicant is a holder of prospecting licence over the area applied for.
2. Each part of prospection area contains at least one oil producing well.
3. Undertaking that the applicant shall beacon each part in respect of which a Mining Lease is required in accordance with Regulations of Execution.
4. If the applicant wishes to obtain a Mining Lease to the remaining half of the Prospecting area, he should so indicate in this initial application. (Copies of contract and complementary maps are supplied by the ministry on payment of prescribed fees).
5. A cash deposit as guarantee for the execution of the conditions of leases.
6. Applications shall be made in triplicate and addressed to the Central Minister of Commerce and Industry.





## OIL AND GAS RIGHTS IN

## GABON

1. Must be holder of exploration permit for a grant of exploitation permit.
2. To obtain a concession, applicant must be holder of exploration permit or exploitation permit.
3. Any physical or juridical person irrespective of nationality is eligible but must have his main office in Gabon.

## LIBYA

- Applicant need not be a holder of Reconnaissance Permit. The law places no restriction based on nationality, ownership or size but companies with connections in Israel may be barred.
- Registration required.
- Capacity of applicant to place crude oil into international markets is taken into account.
- Applicant is required to furnish a written undertaking to abstain from all political activity in Libya.

1. Applicant should submit proof of the existence within his permit area of an exploitable deposit of hydrocarbons.
2. Holders of exploration and exploitation permits have a right to concession if 1 above is proved and evidence of permit must be given.
3. Particulars of the applicant, its registered office, capital and to what extent it is paid up, details of shareholders, management and control.
4. Map of the concession area applied for with details of boundary location of deposit and well-sites if any on a scale of 1/200,000.
5. Previous activity of applicant in respect of exploration and exploitation of hydrocarbons.
6. General schedule of work projected and minimum financial effort.
7. Documents that will support the ability of the applicant both from a technical and financial viewpoint.

1. Applications in triplicate shall be submitted to the Ministry of Petroleum Affairs.
2. Application shall show by reference to an official map of the Ministry the exact area applied for which should correspond to the grid lines of the official map.
3. Evidence of previous activities in the petroleum industry and of similar operations.
4. Evidence of financial and technical capacity.
5. No single application shall relate to more than one Petroleum Zone.
6. Applicant may be required to furnish further information.





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 REPRESENTATIVE AFRICAN
 

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 NIGERIA
 

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As for reconnaissance and exploration stages but applicant must be a holder of Prospecting Licence.

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 SPANISH SAHARA
 

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Applicant should normally be a holder of Exploration Permits and prove the existence of hydrocarbon in commercial quantities. He need not be a permit holder in the case of direct grant of concession.

Other qualifications are as for reconnaissance and exploration stages.

As in Exploration Licence except that in No. 9 (ante) one corner of the area applied for should be tied to a Decca Control Beacon or to any other existing survey beacon.

Applicant must furnish together with his application the following:-

1. Maps of the exploitation area, scale 1:50,000 showing exploration permit and concession.
2. Proof of the existence of hydrocarbons in commercial quantities by the holder of exploration permit.

Other information required include -

- (1) characteristics of petroleum discovered;
- (2) depth, pressure and other physical characteristics;
- (3) estimated size;
- (4) potential production;
- (5) accessibility of concession.





## COUNTRIES

## SOMALIA

1. Holder of research permit is preferred to all applicants.
2. Technical and economic capacity.
3. Residence of applicant must be either established in Somalia or applicant must give an undertaking to establish residence if rights are granted.

Concession

1. The full name of the applicant, his residence in Somalia or intention to establish one.
2. Application shall be accompanied with "a planimetry of the zone for which the permit is being requested, in quadruplicate, on a scale not inferior to 1/25,000" and
3. A technical report on the zone itself and on work program planned.
4. "Evidence of technical and economic qualifications to develop the enterprise".





## COMPARISON OF LEGISLATION

## EXPLOITATION STAGE

## LEASES AND CONCESSIONS (Cont'd)

## ALGERIA

## Formal Requirements (Cont'd)

7. If applicant does not hold a concession right, or asks for the benefit of the transfer of a concession, evidence of technical and financial capacity.
8. Two extracts from the 1/200,000 scale map of the region with details to identify the perimeter applied for.
9. A plan of the concession in duplicate on scale 1/20,000 or 1/50,000 showing all productive wells drilled during the delimitation of the deposit in question.
10. Details of work undertaken and the characteristic of the deposit.
11. Overall program of exploitation.
12. Agreement to submit work program annually.
13. If applicant is not a discoverer of the deposit, a notification of application to the discoverer or text of agreement between them.

## C. Limitation on Area

Area covered by the exploitable deposits or as fixed by the concession deed.

No provision on number of concessions.

## D. Mandatory Area Reduction

Apart from mandatory relinquishment during exploration stage, there is no provision for area reduction at this stage.



## ON THE ACQUISITION

ANGOLA

EGYPT

The maximum area for a concession is set at 500 hectares but larger areas have been granted under special concessions.

Area not exceeding half the exploration area.  
Applicant has the right to secure a lease of the remaining half (to which a higher royalty of 25% is attached) provided the intention is stated in the original lease application.

No provision

No provision (But see Duration and Area Reduction in Chart ID)





## OF OIL AND GAS RIGHTS IN

GABON

LIBYA

2,000 square kilometers is maximum total area unless more is granted by decree.

Maximum area that may be held by a concessionaire is 220,000 sq. kilometers (84,942 sq. miles) in the four petroleum zones into which the country is divided. Three concessions may be held in each of the first and second zones and four in each of the third and fourth zones.

No provision

Total holding not to exceed 220,000 sq. kilometers. Original area under concession reduced to 75 per cent of the original size within 5 years from the date of concession, to 50% of the original size within 8 years, and to one-third of the original size for the first and second zones and to one-quarter of the original size in areas located in the third and fourth zones.





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 REPRESENTATIVE AFRICAN
 

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NIGERIA

SPANISH SAHARA

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Any size approved by the Government. May be over the whole area of the licence if on land situated south of latitude 7° N, or one-half of the permit area if situated on land north of latitude 7° North or on the Continental Shelf of Nigeria.

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Total area may not exceed 50% of the permit area with a minimum of not less than 3,000 hectares.

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No provision

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No provision



## COUNTRIES

## SOMALIA

No statutory provision regarding maximum area.

Area granted is permit area less area released during permit stage.

No statutory provision but the Convention between Somalia Government and Sinclair Somal Corporation (1961) provides for:-

1. \*\*The release of 25 per cent of permit area at the end of the first year, further 25% of permit area at the end of the fourth year.
2. At the end of the seventh year, to release areas so that concessionaire does not retain more than 25% of the on-shore concession area in addition to the off-shore concession area.
3. At the end of the nineteenth year the total area to be retained shall not be greater than 18.75 per cent of the on-shore concession area in addition to the off-shore area.

\*\* If not complied with during permit stage.





## COMPARISON OF LEGISLATION

## EXPLOITATION STAGE

## LEASES AND CONCESSIONS (Cont'd)

## ALGERIA

## E. Duration

50 years with no extensions

## F. Payments (Fees, Bonus, Rents, etc.)

No rental

Crude oil  $12\frac{1}{2}$  per cent of value at wellhead.

Natural gas 5 per cent "of the value" payable in cash.

Income tax on profits increased from 50 to 53 per cent for 1965-67, to 54 per cent for 1958, and to 55 per cent for 1969 and after, calculated on the basis of a "conventional price" equivalent to U.S. \$2.08 per barrel f.o.b. Bourgie, instead of an actual sales price as previously. (Franco-Algerian Agreement of July 29, 1965).





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 ON THE ACQUISITION
 

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## ANGOLA

40 years initial term with a right to renewal for a further 20 years.

12.5 per cent on net amount of oil produced and kept in the year.

Royalty may be fixed in the concession agreement if more than 12.5 per cent.

Royalty on recent concessions is 12.5 per cent of sale value at well-head or point of extraction, of all substances won and saved in each calendar year.

## EGYPT

30 years maximum initial term with one extension for a period not exceeding 15 years.

Royalty is 15 per cent of gross petroleum produced and stored during the year.

Rental is U.S. \$34.87 per acre or part thereof (2,500 m/ms Egyptian pounds, per hectare).

The rental is deductible if the royalty exceeds or is equal to it. Basis of calculation of royalty is the average price for crude of similar grade or nature in recognized world market.

Western Desert. Royalty varies for each concession area but not less than 15 per cent in cash or kind for 10 years from exploitation date - then raised to 25 per cent for the remaining period and upon renewal.

Foreigners pay rental on lands used for operations at rates specified varying from 28 U.S. cents per square meter for lands on which industrial plants are situated to \$7.75 cents per air-field operated.



## OF OIL AND GAS RIGHTS IN

## GABON

## LIBYA

Exploitation - 5 years renewable for a period of 5 years each.

Concession - 75 years renewable one or more times for a period of 25 years each.

50 years maximum initial term renewable for any period provided that the total duration shall not exceed 60 years.

Royalty - 12.5 per cent on all hydrocarbons extracted and saved in each calendar year unless higher percentage is fixed in any particular concession agreement.

Value of royalty based on sale value at the point of extraction or at the well-head.

1. Fees:-

(a) Initial fee of 100 Libyan pounds per 100 sq. km. upon grant of concession.

(b) Annual surface rent per 100 sq. km. as follows:-

(i) First and second zones: 10 Libyan pounds for each of the first 8 years, 20 Libyan pounds for each of the next 7 years but as soon as commercial discovery is made within these 15 years the rent increases to 2,500 Libyan pounds for the remainder of 15 years.

(ii) Third and fourth zones: 5, 10 and 2,500 Libyan pounds respectively for corresponding periods.

(iii) 3,500 Libyan pounds for each of the five years from the expiry of the fifteenth year.

(iv) 5,000 Libyan pounds for each year thereafter.

2. Royalties.

Crude oil: 12.5 per cent. The value is calculated on the basis of posted price as defined in Article 14(5) of the amended Petroleum Law dated July 15, 1961.

Natural Gas: 12.5 per cent sale price less specified deductions.

N.B. Financial arrangements are based on 50-50 of net profit after a defined event.





## REPRESENTATIVE AFRICAN

## NIGERIA

## SPANISH SAHARA

1. On land 30 years maximum initial term with right to renewal for a further 30 years.
2. On Continental Shelf, 40 years with right to renewal for a further 40 years.

50 years maximum initial term renewable for a period of 10 additional years.

- Exploitation under Prospecting Licence - 1. Four shillings per ton on all crude oil of a potential production up to 500,000 tons per annum, thereafter,
2. 12.5 per cent of the well-head value of all crude oil won and saved on land and territorial waters area.
  3. 10 per cent of well-head value on Continental Shelf up to 7 nautical miles from the three miles limit.
  4. Eight per cent on the remainder of the Continental Shelf.
  5. Royalties on casing head spirit are respectively 10, 8 and 6.4 per cent of well-head value in the areas detailed in (2), (3) and (4).
  6. Natural gas 5, 4 and 3.2 per cent respectively of actual sale price.

Exploitation under Oil Mining Lease-as listed above.

Rental - 2 shillings and 6 pence per acre for the first year increasing to 10 shillings per acre in the sixth and subsequent years.

Premium - payable as listed in Chart 1.

Surface rents per hectare per year

- a) First 5 years: .80 gold pesetas
- b) Next 5 years: 2.40 " "
- c) Next 5 years: 6.40 " "
- d) Next 5 years: 8.00 " "
- e) Next 5 years: 6.40 " "
- f) Next 5 years: 3.20 " "
- g) Till end of concession: 2.40 gold pesetas.

Surface rents shall be paid if tax (equivalent to royalty) is less than surface rent.

Tax on gross production is paid monthly as follows:-

Zone 1, 13.5 per cent.

Zone 11, 12.5 per cent.

Portion of product used in operation is excluded. Value shall be determined from quotations for similar types on world market taking cost of transportation into account.

(Note profit taxes are also levied)





## COUNTRIES

## SOMALIA

Not exceeding 40 years with two possible extensions of not more than ten years each.

### 1. Rentals

To be fixed in the decree concession payable annually in proportion to the determined area of the concession.

2. Business transaction fees (in addition to ordinary fees in connection with agreement between private parties).

(a) Prospecting licences or research permit, So 15;

(b) Decree of concession, So 24;

(c) Authorization to transfer research permit, So 360.

Royalty, 15 per cent of production calculated on the basis of well-head value.

Royalty on natural gas is 12.5 per cent of sale price of all gas recovered less processing and transportation costs.  
(Sinclair Somal concession)



## COMPARISON OF LEGISLATION

## EXPLOITATION STAGE

## LEASES AND CONCESSIONS (Cont'd)

## ALGERIA

## G. Rights granted

1. To work and win hydrocarbons and related substances.
2. To dispose mainly by export of crude extracted from the field.
3. To transport in its own installations within Algeria the products exploitation, e.g. Pipe line right.
4. To relinquish the concession in whole or in part.
5. To assign subject to authorization.

Ancillary Rights

6. Free use of public lands for operations including pipelines; use of private lands subject to payment of compensation.
7. Construction work connected with exploration and exploitation.
8. To import duty free all materials and equipment for operations if they originate from countries subject to French custom.

## H. Work Obligation

1. To submit annual work program covering the definition, the putting into operation and the exploitation of the field and estimates of production for the year.
2. To maintain continuous exploitation except for force majeure.
3. To observe limitation placed on production - upper and lower limits as well as their total amount.
4. Subject to prior approval for the construction of a pipe line, to complete the construction of certain sections or the entire project without delay in order to facilitate collection from other production areas.
5. To "pool" with third parties holding transportation rights in same geographic region for construction or utilization of pipe lines.





## ON THE ACQUISITION

## ANGOLA

1. To produce, save, sell and export hydrocarbons (including sulfur, helium and saline substances under "special permission").

Ancillary Rights

2. To transfer or alienate subject to authorization.

3. Free use of public lands for operations, use of private lands on payment of compensation.

4. To surrender concession.

5. Rights to renewal.

## EGYPT

1. To produce and save.

2. To sell, subject to the right of the government to purchase 20 per cent of crude oil produced or part of such 20 per cent if refined in Egypt.

3. To export, subject to reserving an assigned quota to satisfy the requirements of refineries in Egypt.

4. To refine and manufacture locally.

Ancillary Rights

5. To transfer subject to government authorization.

6. Rights to renewal.

7. Construction work connected with exploration and exploitation.

1. To develop the deposits discovered promptly and to maintain production in a continuous and regular manner except for force majeure.

2. To forward semi-annual reports giving details of the operations carried out.

3. Present first annual work program within three months of grant of concession and commence operations within three months of approval.

4. To assure conservation of the deposit and to cause maximum economic yield.

1. Each block in exploitation lease must contain at least one petroleum producing well.

2. To commence and continue operations in a serious manner within four months from date of exploitation lease.

Suspension of operations for more than 30 days without approval means not "continuous".

3. To spend minimum total and annual expenditure.

4. To refine and manufacture locally part of production after exceeding a certain limit (depends on agreement of parties).





## OF OIL AND GAS RIGHTS IN

## GABON

## LIBYA

Exploitation Permit

1. Rights to concession.
2. To assign, transfer or lease subject to prior authorization.
3. Exclusive right to prospect and explore for and exploit.

Concession

4. To produce, transport in own facilities, dispose (Pipe line right included) subject to authorization.

Ancillary Right

5. Importation of equipment and plant free of duty.
6. To renew concession.
7. To occupy land subject to payment of compensation as regards private lands.

1. Geological investigation including aerial surveys, search for bore for and extract petroleum.
2. Transportation of products by pipe line or otherwise.
3. To use, process, store, export or dispose of petroleum products, erect harbors, etc.
4. Importation of equipment and plant free of duty if not locally available.
5. Right of renewal.
6. To occupy land for operations subject to payment of compensation for privately owned land.
7. To drill for water, use gravels, erect installations subject to approval of authorities.

1. To demarcate the deposit, after discovery of commercial deposit, with utmost diligence.
2. To deliver all samples and submit documents and information of any geological hydrological or mining nature when required.
3. To forward the results of every geophysical survey carried out.
4. Obligation for use and training of nationals is usually imposed.
5. No suspension or serious restriction of exploitation without reasonable cause.
6. To supply a fraction of production for need of Franc Zone.

(Covers exploration and exploitation).

1. Within eight months of grant, to commence exploration.
2. Minimum expenditure is as follows -
  - (a) Concessions in the first and second zones:-
    - (1) first five years, one and one half Libyan pounds per sq. kilometer per annum on the average;
    - (11) next three years, three and one half Libyan pounds per sq. kilometer per annum on the average;
    - (111) thereafter during each successive five year period, six Libyan pounds per sq. kilometer per annum on the average.
  - (b) Concessions in the third and fourth zones: -





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 REPRESENTATIVE AFRICAN
 

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## NIGERIA

1. To win and dispose of oil and other hydrocarbons.

2. To export substances produced.

Ancillary Rights

1. To cut timber, make roads, construct installations, to work gravels, etc.

2. Importation of equipment, and plant free of duty.

3. To occupy lands necessary for exploration and exploitation subject to payment of compensation in the case of private lands.

4. To renewal and surrender of whole or part of the area under lease.

## SPANISH SAHARA

1. To work and win, store, transport and sell in Spain or abroad the substances produced.

2. To refine and export hydrocarbons extracted in excess of amount required for national consumption. But applications have to be granted before the rights to refine, store and transport are exercised.

Ancillary Rights

3. Easements on public or private properties.

4. Importation of equipment and plant duty free.

1. Carry out a program of searching for, boring for, winning, getting and refining (if lessee has erected a refinery) petroleum.

2. May be required to construct a refinery or increase the capacity of existing one or to provide capital for these purposes.

3. To avoid harmful and wasteful operations notably to observe proper conservation practices.

4. To give notices, submit reports, records of specified operations and to keep records of boreholes, samples of strata, petroleum and water and notify the authorities of any discovery of petroleum.

All information, samples, notices are to be submitted at stipulated periods of time.

1. To furnish (a) Maps of exploitation area.

(b) A complete vertical and horizontal geological study including test drilling.

(c) Production tests.

(d) Proof of production tests affected.

(e) Exploitation program, costs, and maps of installations.

2. Exploitation must begin within 3 years.

3. 30 days advance notice before drilling of exploitation well.

4. Required monthly report giving complete information and statistics.

5. No well within 100 meters of concession boundary.





## COUNTRIES

## SOMALIA

1. Exclusive right to drill for, extract, produce, render suitable for trade, carry away, export, sell, dispose of.
  2. May dispose of all mineral substances which are by-products of oil and gas.
- Ancillary Rights
3. Right to release any area or areas.
  4. To build a refinery.
  5. Import plant and equipment free of duties. Taxes and other fiscal assessments do not apply.
  6. Construct facilities for operations.
  7. Use of surface land.

1. Concessionaire must exploit the deposit with efficient technical and economic means.
2. Exploitation must be continuous and at the maximum rate deemed economically feasible.
3. Must supply authorities with all statistical data and similar information that may be requested.
4. Must begin operations according to the terms of the decree of concession, within the proper time limit, or in absence of such time limit, within 4 months from the date of publication of the decree of concession.
5. To submit a map showing detailed information of any deposit in which oil is discovered.





## COMPARISON OF LEGISLATION

## EXPLOITATION STAGE

## LEASES AND CONCESSIONS (Cont'd)

## ALGERIA

## Work Obligation (Cont'd)

6. Obligations relating to scientific research may be imposed on explorers.
7. To observe conservation rules and practices and cause a maximum economic yield in liquid or gaseous hydrocarbon including the possible use of secondary recovery methods.

## RECONNAISSANCE AND EXPLOITATION

## I. Other Obligations

- The Petroleum right holder is under obligation
1. To give prior notice to the authorities of any measures potentially capable of leading to a modification in the control of the permit holder or associates, in particular through distribution of share.
  2. To give notice to the authorities of any change resulting from any operation in the distribution of the capital stock of the holders or associates as soon as the participation of any person exceeds 2 per cent of the said capital.
  3. To give prior notice to the authorities of any measure tending to transfer to third parties all or part of the rights of the permittee.
  4. To give notice to authorities of any measure capable of modifying either the protocols, agreements or contracts in regard to the obligations and rights of the parties.
  5. To pay the royalty, direct taxes on profits and other fees prescribed by fiscal regulations or reserved in the contract documents.



## ON THE ACQUISITION

## ANGOLA

## EGYPT

1. To maintain in the Province of Angola the books of account necessary to evidence the expenditures which have been incurred.
2. To adopt appropriate measures in accordance with industry to minimize water pollution, or to cause damage or destruction to animals.
3. To give preferential right of purchase of part or whole of the production to the Government in the event of war.  
Price will be fixed after consultation.
4. To pay royalty, rents, fees, etc. reserved in the concession document.

1. To apply for exploitation lease as soon as it is established that a deposit discovered is capable of commercial production.
2. To relinquish permit area progressively as prescribed.
3. To give preferential right of purchase of whole or part of production to the Government in the event of war.
4. To surrender the concession area as provided. (See Area Reduction, Ante).
5. To refine and manufacture locally part of the production after exceeding a certain limit.
6. Participation of national capital may be included in the concession agreement.
7. To pay fees, rents, royalties surtaxes, income taxes, as provided in the concession deed.
8. To give access to proper government officials to inspect books, registers, papers, to ensure implementation of the Law, Regulations and contracts.







## OF OIL AND GAS RIGHTS IN

## GABON

## LIBYA

(1) First eight years, one and one half Libyan pounds per square kilometer per annum on the average;

(11) Next four years, three and one half Libyan pounds per square kilometer per annum on the average;

(111) Thereafter during each successive five year period, six Libyan pounds per square kilometer per annum on the average.

3. To comply with work program submitted and submit regular reports of its operations.

1. Concessionaire must comply with Mining Regulations.
2. Modification in the articles of the company must be submitted for Government approval.
3. Holder will carry out his exploration and research studies according to the regulations and in an active and continuous manner.
4. Employment and training of nationals not less than a given percentage of total staff.
5. In addition to periodical documents required, holder must present monthly statements indicating the importance of work done by exploration and research studies and a summary of work effected. Also annual reports of above operations supported by plans, maps as well as a summary of expenses.

1. Minimum number of Libyan subjects employed in Libya ten years from date of commencement of operations shall have reached 75 per cent of total number of persons employed by the company in Libya.
2. The concessionaire to pay to the Government at least 2,500 and not more than 5,000 Libyan pounds annually to be applied to the training of Libyan subjects to fit them for employment in petroleum industry.
3. To furnish annual report of operations containing e.g. number of boreholes, wells drilled with plans; statement of quantity of petroleum, water and natural gas encountered; nature and extent of geological surveys carried out.
4. To keep full record of its operations - production, refinery sale and disposal.
5. To provide adequate system for disposal of water and waste oil in accordance with good oil field practices and plug all boreholes and wells made before any are abandoned.





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 REPRESENTATIVE AFRICAN
 

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## NIGERIA

## SPANISH SAHARA

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| <p>1. Within three years of the date of grant of the licence to start a training scheme for technical training of Nigerian staff, with a view to their employment as tradesmen and craftsmen in the operations of the lessee.</p> <p>2. Within a reasonable time, to commence</p> <p>(a) the training of Nigerians in supervisory posts, and</p> <p>(b) the recruitment and training of professional Nigerian staff for employment in senior managerial grades.</p> <p>3. Licensees shall comply with any ordinance, law regulations or official instructions relating to town or country planning, health and safety of personnel and public.</p> <p>4. To adopt all practicable precautions to prevent pollution of inland waters, and in the case of off-shore operations, high seas or territorial waters.</p> <p>5. To pay compensation if fishing rights are unreasonably interfered with.</p> | <p>1. Foreign concession holders shall convert their foreign currency into pesetas to cover operation costs.</p> <p>2. To supply all information with respect to their operation to the Department of Industry.</p> <p>3. Holders of permits and concessions must subject to the jurisdiction of the laws and courts of Spain.</p> <p>4. Foreign applicants for permit must transfer exploration permit to operating company within twelve months.</p> <p>5. To comply with the general tax law, pay rents, royalties, fees etc. reserved in the permit or concession agreement.</p> <p>6. To comply with health and safety regulations.</p> |
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## COUNTRIES

## SOMALIA

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6. To submit annual report of operations during the preceeding year including geological, geophysical surveys, maps, number of boreholes and wells drilled and quantities of petroleum, water or minerals encountered.

7. Work program for the current year to be submitted in advance.

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1. Employment of Somali citizens in company's operations.
  2. Company must furnish specified reports, data, samples, information concerning its operations.
  3. To provide adequate system for disposal of water, waste and other refuse.
  4. To carry on operations in accordance with good oil field practice.
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## COMPARISON OF

RECONNAISSANCE AND EXPLOITATION  
(Cont'd)

## ALGERIA

## Other Obligations (Cont'd)

6. To construct refineries.
7. To undertake the technical training of Algerian personnel.
8. On expiration of concession, drillings, casings and wellheads shall remain in place in a condition for the maintainance and pursuit of normal exploitation of the deposit.
9. To furnish geological, geophysical, production and other reports.
10. To comply with health, safety and labour regulations.

## J. Controlling Laws

1. Statute No. 58-1111 of November 22, 1958 relating to the Exploration, Exploitation and Transportation by Pipelines, of hydrocarbons and to the Fiscal Regime for these activities within the areas of the Organization Commune des Régions Sahariennes. (Journal Officiel de la Republic Francaise, November 23, 1956, p. 10526).
2. Decree No. 59-1334 of November 22, 1959 setting forth the conditions of implementation of Ordinance No. 58-1111 of November 22, 1958.
3. Standard Agreement for the Concession of Gaseous or Liquid Hydrocarbon Fields in the Districts of the Oasis of the Saoura.
4. Principles of Co-operation for the Development of Sahara's Underground Resources (Evian Declarations of March 19, 1962).
5. Sahara Protocol of August 26, 1962.
6. Franco-Algerian Accord of July 29, 1965.





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 LEGISLATION ON THE ACQUISITION
 

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 ANGOLA
 

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 EGYPT
 

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| <p>1. General Law of Mines of September 20, 1906 - which applies to Portugal and also to her Overseas Provinces.</p> <p>2. Decree of December 9, 1909 relating to exploration and exploitation of petroleum in all the Portuguese Overseas Provinces. Article 1 extends the operation of the 1906 decree to petroleum mines.</p> | <p>1. Law No. 66 of 1953 on Mines and Quarries, Articles 1, 24-44, 55-58 and 68.</p> <p>2. The Terms of Concession in Western Desert of The Egyptian Region of the U.A.R. - 1960 - which was published under Articles 50 and 51 of the Law 86 of 1956 authorizing special terms exempt from provisions of Law 66 of 1953.</p> |
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## OF OIL AND GAS RIGHTS IN

## GABON

## LIBYA

7. Obligations resulting from general regulations governing mining, fiscal, customs and exchange matters.

6. To pay such rents, fees, taxes as are reserved in the concession deed.

1. Law 15/62 of June 2, 1962 creating a Mining Code in the Republic of Gabon which governs exploration, production, transportation, refining and marketing of petroleum.

1. The Petroleum Law 1955. Law No. 25 of April 21, 1955.

2. Petroleum Regulation No. 1 of June 26, 1955 relating to the division of Libya into Petroleum Zones; requirements for the application for Permits and Concessions and their consideration by the Commission.

3. Petroleum Regulation No. 2 of June 26, 1955 giving the concession holder the right to export any petroleum produced subject to certain restrictions.

4. Petroleum Regulation No. 3 extending Regulation No. 2.

5. Petroleum Regulation No. 4 relating to fees for obtaining official copies and maps.

6. Petroleum Regulation No. 5 relating to payment of rents.

7. Explanatory Memorandum and Text Amending the Petroleum Law of 1955 (July 15, 1961)





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 REPRESENTATIVE AFRICAN COUNTRIES
 

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## NIGERIA

## SPANISH SAHARA

6. To carry out its works, installations in such a manner as to leave safe and convenient channels for shipping in the area of licence or lease.

7. To keep full record of its operations and products won, saved, treated, refined, sold, or disposed of and the methods and results of physical tests.

8. To pay annually the rents, fees and royalty reserved in the licence or lease.

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1. Mineral Oil Ordinance (Chapter 135, Laws of the Federation of Nigeria, 1948 edition (Ord. No. 17 of 1914, 1 of 1925)).

2. Government Notice No. 2675 relating to Licences and Leases granted under section 3 of the Mineral Oils Ordinance. (Published in Federal Gazette, No. 76 of December 17, 1959).

3. Government Notice No. 578 (Federal Gazette No. 16 of 31.3 60) expanding and modifying the terms of Government Notice No. 2675.

4. Model Oil Prospecting Licence (Land and Territorial Waters Areas).

5. Model Oil Mining Lease (Continental Shelf Area).

6. Petroleum Profit Tax Ordinance 1959. (Supplement to Official Gazette No. 26, Vol. 46, April 30, 1959 - Part A).

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1. Hydrocarbon Act of December 26, 1958 which governs Petroleum Industry in Spain and its possessions.

2. Decree 977/1959 of June 12, 1959 Regulations to Hydrocarbon Act of December 8, 1958.





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COMPARISON OF LEGISLATION ON THE ACQUISITION OF

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RECONNAISSANCE AND EXPLOITATION  
(Cont'd)

ALGERIA

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Controlling Laws (Cont'd)

concerning Regulation of Hydrocarbon Affairs and Industrial Annexes Nos. 11 through XII.  
7. Protocol Concerning the "Cooperation Association" (comprising Annex 1 to the Franco-Algerian Accord of July 29, 1965).  
8. Decree of 30 December, 1965 subjecting companies operating in Algerian Petroleum to terms of the Franco-Algerian Accord of July 29, 1965.



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OIL AND GAS RIGHTS IN REPRESENTATIVE AFRICAN COUNTRIES

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## LIBYA

## SOMALIA

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| <p>8. Petroleum Regulation No. 6 of December 21, 1961 further amending certain provisions of the 1955 Law as amended by Royal Decrees of July 3, 1961 and November 9, 1961.</p> <p>9. Royal Decree amending certain provisions of the 1955 Law (November 9, 1961).</p> <p>10. Petroleum Regulation No. 7 relating to the procedure for considering applications.</p> <p>11. Law of July 16, 1963 amending Art. 2 of the 1955 Law to establish a Supreme Petroleum Affair Council.</p> <p>12. Royal Decree Law of November 20, 1965 amending certain provisions of the 1955 Law e.g. calculation of royalty is to be based on applicable posted price.</p> | <p>Ordinance No. 13 of August 15, 1961 - Mine Ordinance.</p> |
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## APPENDIX 2

TABLE 1

## LENGTH EQUIVALENTS

1 cm	= 0.3937 inch	= 0.0328 foot	
1 metre	= 39.37 inches	= 3.28 feet	= 1.094 yards
1 kilometre	= 3,281 feet	= 1,094 yards	= 0.6214 mile
1 foot	= 0.3048 metre		
1 yard	= 0.914 metre		
1 mile	= 63,360 inches	= 5,280 feet	= 1760 yards = 1.6096 kilo- metres

## AREA EQUIVALENTS

1 sq. metre	= 10.76 sq. ft.	= 1.196 sq. yds.	= 0.000247 acre
1 hectare	= 10,000 sq. metres	= 107,641 ft.	= 11,961 sq. yd.
	= 2.4711 acres	= 0.003861 sq. mile	
1 sq. km.	= 100 hectare	= 247.11 acres	= 0.38611 sq. mile
1 sq. ft.	= 929 sq. cm.	= 0.929 sq. metre	
1 sq. mile	= 2.59 sq. kilometre	= 259 hectare	= 640 acres
1 acre	= 43,560 sq. ft.	= 4,840 sq. yds.	= 4,047 sq. metres
	= 0.405 hectare		

## VOLUME EQUIVALENTS

1 cu. metre	= 35.314 cubic feet	= 1.308 cubic yards
1 cu. yard	= 0.7645 cu. metre	

## CAPACITY EQUIVALENTS

1 imperial gallon	= 277.42 cu. ins.	= 1.2011 US gallons	= 4.543 litres
	= 0.1605 cu. ft.	= 0.004545 cu. metre	
1 US gallon	= 231 cu. ins.	= 0.8325 imperial gallons	= 3.785 litres
	= 0.0037853 cu. metres		
1 barrel	= 42 US gallons	= 35 imperial gallons	= 5.614 cu. ft.
	= 0.1589 cu. metre		
1 barrel oil	= (350 x sp. gr.) lbs.	= (sp. gr. ÷ 6.405) ton	
	= (sp. gr. ÷ 6.299) metric tons		
1 US gal. of oil	= (8.33 x sp. gr.) lbs.		
1 cu. ft. oil	= (sp. gr. ÷ 35.96) tons		

## WEIGHT EQUIVALENTS

1 metric ton	= 1,000 kilograms	= 2,204.6 lbs.	= 0.9842 ton
1 ton of oil	= (6.405 ÷ sp. gr.) barrels	= (224 ÷ sp. gr.) gallons	
	= (35.96 ÷ sp. gr.) cu. ft.		

Source: A. Beeby-Thompson; Oil Field Exploration and Development; (London: Technical Press Limited, 1950).





## NOTE ON WEIGHTS AND MEASURES

To convert "tons per year" to approximate "barrels per day" divide by 50 (example: 50,000,000 tons per year = 1,000,000 barrels per day).

To convert "barrels per day" to approximate "tons per day" multiply by 50 (example: 500,000 barrels per day = 25,000,000 tons per year).

Source: Lenczowski, George. Oil and State in the Middle East (New York: Cornell University Press), p. xix.

TABLE 2

## AFRICAN CURRENCIES

CEDI (Ghana)	1C = 8 <sup>s</sup> 4 <sup>d</sup>
CFA FRANCS	684 = 1 Pound
DINAR (Algeria)	13.7D = 1 Pound
DIRHAMS (Morocco)	14.1D = 1 Pound
East African Stirling	1 <sup>s</sup> = 1 <sup>s</sup>
Egyptian POUND	£E1.2 = 1 Pound
ESCUDOS (Angola and Mozambique)	80 = 1 Pound
Ethiopian DOLLAR	7.0 = 1 Pound
LEONE (Sierra Leone)	L1 = 10 <sup>s</sup>
Liberian DOLLAR	2.8 = 1 Pound
Somali SHILLING	1so = 1 <sup>s</sup>
Sudan POUND	£S1.0 <sup>s</sup> 6 <sup>d</sup> = 1 Pound
Nigerian POUND	£1 = 1 Pound

NOTE: 1 ENGLISH POUND = 3.01 CANADIAN DOLLARS  
(As at December, 1966)

Source: Data from Africa Research Bulletin, Economic Financial and Technical Series, Vol. 3, No. 7, July 15 - August 14, 1966.



## APPENDIX 2

TABLE 3

## DATE OF INDEPENDENCE

COUNTRY	YEAR OF INDEPENDENCE
1. Algeria	1962
2. Cameroun	1960
3. Congo (Brazzaville)	1960
4. Ethiopia	--
5. Gabon	1960
6. Ghana	1957
7. Kenya	1964
8. Liberia	1847
9. Libya	1951
10. Mali	1960
11. Morocco	1960
12. Niger	1960
13. Nigeria	1960
14. Senegal	1960
15. Sierra Leone	1961
16. Somalia	1960
17. Sudan	1956
18. Tunisia	1956
19. United Arab Republic	1922

Source: Investment Laws and Regulations in Africa: (New York: United Nations Publication, 1965), Table 1, p. 78.







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